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THE  
SHIA SCHOOL OF ISLAM AND ITS BRANCHES,  
ESPECIALLY THAT OF THE  
IMAMEE-ISMAILIES.

A SPEECH DELIVERED  
BY  
E. I. HOWARD, ESQUIRE,  
BARRISTER-AT-LAW,  
IN THE BOMBAY HIGH COURT,  
IN JUNE, 1866.

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## NOTICE.

THE following account of the various branches of the Shia School of Islam—especially that of the Imamee-Ismaiahs—and their practices was given by Mr. HOWARD, of the Bombay Bar, in the course of a learned address by him in the High Court, Bombay, in June last; as one of the Counsel for the defence in the “Aga Khan Case.” This was an Equity Suit, in which a minority of the Bombay Khojahs sought to obtain a Decree of the Court, removing His Highness Aga Khan from his position and authority as spiritual head and hereditary “Pir” or “Saint” of the Khojah tribe or caste. The contention by the Relators and Plaintiffs was, that the Khojah community had from their conversion from Hinduism in the 15th century of the Christian Era, been Mahomedans of the Suni School; and that the pretensions of His Highness were false and illegal. And that his allegation that the Khojahs were Sunis, and that from the death of his father he had always been recognised as their spiritual Chief, was false; and that the theory of his being such Chief was repugnant to the doctrine of orthodox Moslems.

Mr. Howard, as one of the Counsel for the Aga and the majority of the Khojah community (following the Advocate General, who argued on general grounds), addressed himself to the historical part of the case; he showed that the Khojahs were at the outset converted by a Shia, and not by a Suni, and that they had always been Shias, (though outwardly Sunis). In an elaborate argument he touched on the history of the different branches of the Shia School, especially that of the Ismaiahs—the descendants of the old tribe of “Assassins,” of whom Aga Khan is the present head.

The best authorities on the subject of the Mahomedan religion were quoted in the course of the argument, and as a work of reference on the point this address will be found very useful. The view taken by Mr. Howard was also that of the learned Judge, Sir Joseph Arnould, before whom the suit was heard, for in November last, when his Lordship delivered his very elaborate and learned judgment in the case, a decree was given for the Aga and his co-defendants on all the issues.

The contents of the following pages is the transcript of verbatim notes of the speech, revised for the press by Mr. Howard.

BOMBAY,  
December 1866.

H. WYNFORD BARROW;  
*Short-hand Writer.*



**Mr. Howard** said: "This suit arises out of a quarrel between two parties in the Bombay section of the Khojah community. The quarrel or quarrels may be said to have commenced about the year 1830, but the dispute does not appear to have extended to the Khojahs of Bhooj, Kutch, Guzerat, or other places, out of the Town and Island of Bombay. The Khojahs have sometimes been called a caste, and sometimes a tribe. Probably, neither term is strictly correct, but they undoubtedly have so much that is Hindu about them, that, to some extent, they may popularly be called a "caste," as they have been frequently termed by my learned friends during the hearing of this suit.

It is not disputed that the faction, of which the Plaintiff and Relators are the representatives, are the minority of the Bombay Khojahs. There is not a precise agreement as to the relative numbers of the two parties; Ahmed Hubbibhoy, the leader of the anti-Aga party, considering that there are about 700 or 800 adult followers of his sect against 3,000 on the Aga's side: whilst Kureem Khan states that there were 750 heads of families who had signed their names in a book as followers of the Aga, and that there were only about 75 heads of families who had refused to sign. But there can be no doubt, taking the two estimates together, and the other evidence on the point given up to this time, that the party represented by the Defendants, is at least six, or seven, times as numerous as the party of the Plaintiffs and Relators.

The latter faction, however, which is confessedly so insignificant in point of numbers, claims to be superior to the other in point of quality. Their Counsel has claimed for them that they are the most intelligent, and the only educated portion of the Khojah community. I am not aware of any evidence that has come before the Court in confirmation of that claim. Indeed, so far as my own judgment goes, I must say there was one Khojah (Kureem Khan) called by the Plaintiffs, but in effect a witness for the defence, and devoted to the party of Aga Khan, whose testimony was more intelligent and far more valuable than that of all the other Khojah witnesses put together. True, the Plaintiffs and Relators keep a



School at which English is taught--a fact much to their credit ;—but this does not show that all the wise men in the caste are upon one side, and all the fools upon the other ; and certainly it must be said on behalf of the so-called ignorant party, that they send their children to this very English school which is kept by their opponents : a fact which at all events shows they have a disposition to learn.

It is also thrown out in favour of the Plaintiffs, that their party includes all the wealthy people of the community, whilst all the poor are on the other side. It is not quite clear what legal weight is sought to be attached to that circumstance. Your Lordship will hardly think that the wealthy men in this caste dispute are, as such, entitled to more votes than the poor, although, apparently, some shadowy right of that kind is set up on behalf of the Plaintiffs. The wealthy Khojahs or "Settias" do generally, though not universally, belong to the anti-Aga party, whilst the poor adhere to the Aga almost without exception. This fact will not incline the balance in favour of the Plaintiffs. On the contrary, it is a subject of strong remark, that the suit was professedly instituted on behalf of the poor, who, as it is now shown, all belong to the party of the Defendants. I will remind your Lordship, that my learned friend, Mr. Anstey, in the course of his elaborate speech, said that one of the great objects for bringing the suit, was to preserve to the poor the "modest provision" which had been made for their maintenance, education, and burial. Now all the poor, for whom so much solicitude is pretended, belong, as the Court has seen, to the party of the Defendants ; so, if the interests of the poor are chiefly to be looked to in the suit, your Lordship may dismiss the Information and Bill at once : all *their* interests are on the side of the Defendants.

The party of the Relators and Plaintiffs, some years ago, began to separate itself from the other Khojas, by the profession and teaching of Sunnism, and thus set themselves up against the Pir or religious Chief, as well as the bulk of the caste. They actually seceded in 1861 to a *Mons Sacer* at Chinch Bunder, where they established a Jummat Khana, from which they carefully excluded all the persons belonging to the other side, and built a masjid for the performance of common worship, according to the Suni rite, which they alleged to have been the faith of the Khojah community since their conversion from Hindooism. Your Lordship will remember that this is neither the first, nor the second, secession of the same party. There was one in

1880, and one in 1848; but on both these occasions the schismatical Jumat Khana was afterwards shut up, and a reconciliation effected. On the present occasion there has been no reconciliation and no re-admission of the seceders, the only connexion which the party of the Plaintiffs maintain with the caste being, that they still bury their dead in the Khojah cemetery: and that on funeral occasions they perform the usual prayers in the Musjid which stands therein. The Plaintiffs are thus out of possession of the Jumat property by their own voluntary act.

And what is it that this *soi disant*, wise, intelligent and wealthy and orthodox, fraction of seceders of the Khojah community lays claim to? Practically, what they seek from the Court is this: That the other party, that is, the majority now in possession, and with them, the religious leader, whom they one and all acknowledge as the hereditary *Pir* of the sect from ancient times, should be turned out, and *excluded from all shares and interest in the caste property, and from all voice in the management thereof*. The Plaintiffs do not pray that the Court will restore them to their position in the caste, although Mr Anstey had the intrepidity to suggest, that one of the objects of the suit was to heal the dissensions and divisions of the community. They do not ask that the caste property shall be divided, and an aliquot part of it assigned to them; but they pray, that those whom they oppose, and all who hold their opinions, shall be totally deprived of any participation in the caste property and management. The Bill, drawn by Mr Anstey, alleges, (following therein the Bill of 1850) that the Khojahs were originally converted from Hindooism by a Suni Missionary, and that, until lately, they were Mahomedans of the Suni sect. In the fifth paragraph of the prayer they pray, "That no person, not being a member of the caste, or having ceased to be a member of the same (and, in particular, *no person professing Shia opinions, in matters of religion or religious discipline*) is entitled unto, or ought to have any share or interest therein, or any voice in the management thereof."

THE JUDGE: "All who are not Sunis, that is —"

MR. HOWARD: "Yes, my Lord. In the 15th paragraph of the Bill they state the Suni profession with more emphasis and detail. They say there "all the said trust estate was so acquired, before any of the doctrines, or any portion of the discipline of the Shea School of Islam was introduced into, and taught unto the Khojah sect, and whilst all

the Mohamedan doctrine and discipline of, or received or acknowledged by the said sect, was derived from, and in conformity with, the teaching of the said Suni School. And it hath always been, and is, a principal and fundamental condition of the tenure by which the said trust estate is held ; that the application thereof shall always be for the promotion of the faith and discipline of Islam, according to the Suni School : and not according to the Shea School thereof ; the latter having been always regarded by the founders, donors, and subscribers, and by the said Khojah sect at large, as altogether heterodox and heretical, and still being so regarded by the said sect (except, such only as have, in the course of the last year and in manner hereafter appearing, been induced to secede to the same." Recollecting that this was the uncompromising prayer of the Plaintiffs, I must say it was with astonishment, which increased on each occasion, that I heard my learned friend, Mr. Scoble—who I think made use of the argument no less than fifteen times—say, that by Act XXI of 1850, no Khojah could be deprived of his interest in the property of the caste on account of having changed his religion. Whatever the value of that argument may be, and I don't think it is worth much, at all events it is easy to see that it really operates against the Plaintiffs. My learned friend's case is that it is the Defendants, not the Plaintiffs, who have changed their religion ; and according to his view of the law, that portion of the prayer which prays for the expulsion of those Khojahs who have adopted the Shea religion must, of necessity, be dismissed by the Court as contrary to the spirit of the Religious Disabilities Act. But the Advocate General has already disposed of the point, by showing, that the Act has nothing to do with quarrels about caste property ; and I merely refer to the matter, because this is one sign among several, that my learned friends have not yet come to an understanding as to what their case is to be.

Now, as to the prayer, that the majority in possession may be turned out of the caste, I will only say, that a very strong case must be made out to induce the Court to interfere. Of course, I admit, that if it could be clearly shown that the caste property was established, as we find some trusts in England established, for the promotion of certain defined doctrines and objects, and that the Defendants certainly do not hold such doctrines as were intended to be promoted, then, I say, I grant, the Plaintiffs, though ever so small a majority, would have the power to turn the majority out."

**THE JUDGE :** That would be so, where the trust was unmistakably clear.

**MR. HOWARD :** Yes, your Lordship will require to be satisfied beyond all doubt that there is a clear trust, before you can decide against the majority in possession. A community, like that of the Khojahs, is formed on the principles which regulate a club : it is a voluntary association of persons, holding the same religious opinions. It may be compared to the political clubs at home : for instance, the Reform Club is entirely an association of persons holding Liberal opinions, whilst the Carlton is composed of Conservatives. Such establishments have necessarily the power to expel members of opposite opinions. Your Lordship will recollect that Mr Gladstone was compelled to leave the Carlton on account of a Liberal vote he had given. Lord Westbury, too, was turned out of the Conservative Club for giving Liberal votes. Such expulsions are voted by the majority, and I repeat, it must be very clearly made out, that in this Khojah community, the Plaintiffs, being a minority, have the right, by virtue of their adherence to the old Khojah religion, to oust the Defendants, before the Court will interfere to help them to do so.

As to the way in which the case against the principal Defendant has been conducted, I much regret the tone of my learned friends. Your Lordship remembers that Aga Khan has been called by a number of hard names, some of them palpably untrue, and insulting, as "false prophet" and the like, and some of them made so by irony, and that in a way which, however common before a petty Jury, is happily very unusual in a Court of Equity. I much regret that Counsel should have thought it proper to cast scorn and ridicule on the titles of Imam, Murshid, and Pir, which are revered by these people and for ages have been borne by Aga Khan and his ancestors : it has given much pain unnecessarily. His position of Pir was inherited, and not assumed, by him. By the Khojas and other Ismailies the Aga is looked upon and revered as the living representative of the Imam Ali, the Saint whom they most revere ; and it is not the Aga's fault that he is so revered. It is not reasonable to suppose an Asiatic should of his own accord reject the homage paid to him, as to a long line of ancestors before him, by the followers of the Ismailia doctrines.

And what is the relief, as against him, that is prayed for ? Why, that he shall be deprived of all the benefits he derives from his sacred

rank, that he shall be turned out of the Jumat Khana of the Khojahs, and restrained from exercising the power and enjoying the position of head of the Khojah caste. In his opening speech, Mr. Anstey observed that the prayer of the Plaintiffs was of the most comprehensive kind, and undoubtedly it is most "comprehensive," so much so, as to pass the limits of my comprehension. In the 7th paragraph of the Prayer, the Plaintiffs pray that : "The Defendant Mahomed Hussain Hoossanee is otherwise called Aga Khan"—I may here say in reference to the several names borne by the Defendant, which formed one of the grounds for Mr Anstey's numerous sneers, that "Aga" and "Khan" are titles ; "Mahomed Hussain" are his personal names ; and "Hoossanee" means that he is descended from the Imam Hoossain, the son of Ali and Fatima. To suggest, therefore (which has been done), that in using those different names and titles, Aga Khan has been skulking about under a number of *aliases*, is an offensive, and gratuitous, insult. He is admitted by Mr Anstey and Mr Scoble to be a Syud, that is, a descendant of Ali, and his genealogy is ancient and splendid. He is the representative of a long line of religious Chiefs, and only one link is even suspected in the line of succession. The prayer against him is that he "may be restrained, by the order and injunction of this Honorable Court, from interfering or claiming to interfere, or setting up or maintaining any claim to interfere in the management of the said trust permises, or generally of the affairs of the said Khojah sect, or in the control or visitation of such management, or in the election or appointment of any Mukhi or Kamaria, or other trustee, or officer thereof, and also from excommunicating or expelling from the said sect, or depriving of any of the rights or privileges thereof, or endeavouring or pretending so to excommunicate, expel or deprive, or denouncing or threatening any member of the said sect for the reason or on the pretence that such member doth resist or oppose or hath or shall have resisted or opposed that Defendant's claims or pretensions in the premises of this Information and Bill mentioned, or any of them ; and also from depriving, hindering, or impeding any member of the said sect of, or in, his right to attend, and act, speak, and vote at any of the meetings of the said community, or of, or in, his right of access to the Jumat Khana, Musjid, and Burial Places, and other the public houses, lands, and places of the said community, or of, or in his right of user of the said moveables or any of them, and from intruding upon, possessing, occupying or

using without the express consent of the said Jumat, any of the said trust premises by, or for, himself, that Defendant, or any of his family, followers, or 'adherents, and from officiating therein, or to officiate at, or celebrated any marriage, or contracts of Khojas, which ought, according to their said usages or traditions, to be celebrated before the Kazee of Bombay, or from seeking or demanding or (save only for a sufficient consideration or else upon the free and unsolicited offer of the giver thereof) accepting, or receiving, from any Khojah, any money or property, under the name of oblation, tax, gifts, alms, presents, or otherwise in his, the Defendant's, alleged spiritual and temporal capacities aforesaid, or any or either of them; and that the other Defendants, other than, and except the said Kazee of Bombay, Hubibhoy Ebrahim, Dhurumsey Poonjabhoy, and Fremjee Jewraz, may be in like manner restrained from concurring with, or aiding or assisting or adhering to the last name defendant, in or attempting to give any effect or obedience unto any such interferences, excommunications, expulsions, deprivations, hindrances, impediments denunciations, threatenings, endeavours on matters last aforesaid, on the part of him, the Defendant, or of his said servants."

Now as regards the opposite party, this prayer means nothing for they pay the Aga neither tribute no obedience On the other hand, for this Court to interfere between him and his devoted followers would be the same thing as for the Court of Chancery to interfere between an Abbot and his Monks, that is wholly impracticable. As long as the Aga remains the recognised spiritual guide of the great majority of the Khojahs of Bombay, those who remain in the caste, have parted with the right to seek the interference of the Court as against him Those who choose can of course leave the caste, and it would be a monstrous absurdity to pretend that a few recalcitrant members of this long-established religious community can come to the Court, and demand that the person, whom they formerly almost worshipped, shall now be turned out, because a few members no longer wish to obey him, or accept his teaching.

The point, therefore, which my learned friends have to establish for the Plaintiffs is, the allegation, in the Bill, *that the Khojahs were by origin Sunis*. I think it very important that that should be remembered, because, after hearing the Plaintiffs' evidence I believe an

attempt will be made to get rid that responsibility. Mr Anstey, in his opening speech, committed his clients to a still more uncompromising profession of Suni faith than that made in the fifteenth paragraph of the Bill, and which I read just now. He said that the Shea practices and opinions of the old Khojah party are entirely new, and due to the Aga's intrigues since his arrival in Bombay. Your Lordship will remember that the main issue between the parties was put by Mr Anstey in these words: "If the Court is of opinion that the Khojahs are Sunis, and that these institutions (the Khojah Jumat Khana, &c.) are charitable institutions of a Suni character, your Lordship will hold, that so far as the subject matter of this suit, and the objects and purposes of it are concerned, that neither the Sheas, Ismailies, or Imamians, are Mohamedans at all; just as in the case of a similar suit on behalf of Sheas, whom your Lordship was satisfied were Mohamedans, in the sense of the term "Sheas;" your Lordship would hold, that the Sunis, seeking a part of a charity founded by Sheas, were *quoad* the suit, no Mohamedans at all. That passage is open to verbal, and even substantial criticism, but I accept it as a statement of the issue really in dispute.

THE JUDGE: That was in reference to the 15th paragraph of the Bill, which alleges that no Shea has any right to the benefits of the property?

MR HOWARD: Yes, my Lord. Then in another part of his speech my learned friend said: "The Relators and their party claim to be Moslems of the Suni faith, and descendants of Hindoos converted to the Suni faith; and to be Indian only in nationality, not in religion, or law. Here is a plain case." Afterwards, your Lordship asked Mr. Anstey this question:—"Do I understand you to be prepared with affirmative proof, that these Khojah charities were instituted by persons of the Suni persuasion for others of that persuasion? To this Mr. Anstey replied that he was so prepared; and Mr. Scoble following, said: "We can show that the Khojahs were Sunis." Now, my Lord, I hold my learned friends to that allegation of the original Suniism of the Khojahs, and to their admission, that they are bound to prove it, as the foundation of their case. That is the main issue, my Lord, although very little in the way of fact or argument has been brought to bear on it, either by Mr. Anstey or Mr. Scoble, who

indeed both shunned the point—it is to that issue that we, on the other hand, shall mainly devote ourselves. Let there be no mistake on that point; the dispute between the two parties really is *whether by origin the Khojahs were Sunis or not*.

**THE JUDGE:** You put it that the Relators and Plaintiffs undertake to show the Khojahs were, in origin, Sunis; and that you, the Defendants, on the other hand, undertake to show, that in origin the Khojahs—

**MR. HOWARD:** Were *not* Sunis. That is my proposition; and I say, that if your Lordship is satisfied from the evidence that the Khojahs were originally not Sunis, the Bill and Information must be dismissed as a matter of course; or, if you are unable, after hearing all the evidence, to say positively, whether the Khojahs are by origin Shias, or Sunis, or whether of any definite religion at all, I say that in that case, the caste management belongs to the majority, and the Court will refuse to interfere on behalf of the Plaintiffs and Relators, who are the minority. There is also the question, whether the caste property is properly a charitable estate, and as to that I will speak afterwards.

**THE JUDGE:** You alluded just now to the fifth paragraph in the prayer, which prays that the Court will decree that the property is held for, and ought to be applied to, the use of persons of the Khojah sect, and “none other.” Well, then, you show that the Plaintiffs here urge the Court to hold, that those alone are entitled to be accounted Khojahs who are Sunis, and that the Sheas are not Khojahs at all?

**MR. HOWARD:** Yes, my Lord.

**THE JUDGE:** Then there is another view of the case perhaps; supposing the Plaintiffs say: “we are Khojahs belonging to a community, which is not proved distinctly, either to be Suni, or Shia; but we claim to be entitled to a portion, at least, of the property which was given for the benefit of the community, at a time, when, if they were not Sunis, they were at least so outwardly; and were in effect, neither Sunis nor Sheas, and, as Khojahs, we claim to have a share in the property?”

**MR. HOWARD:** That, as I said just now, my Lord, the Plaintiffs cannot now do. They have asserted their claim in quite another way. They have committed themselves to the most uncompromising expression of Sunism, and pray for the *exclusive* possession of the



caste property. If they had wished to claim part, they should have framed their case differently. It was the whole tenor of my learned friend's argument, that the Plaintiffs are alone entered, and they pray in the fifth paragraph of the prayer, that every one holding Shea opinions shall be excluded from the caste. The prayer is founded on the allegation in the 15th paragraph of the Bill, that the trust estate was acquired before any of the doctrines or any portion of the discipline of the Shea School of Islam was introduced into, or taught unto, the said sect." So, my Lord, they have put an entirely different case before the Court from the one suggested by your Lordship, and that is what we have come here to meet. If the Plaintiffs had put their case differently, if they had only claimed a share in the caste property, we might have found it difficult to resist their demand, and perhaps have agreed to some compromise,—a course which is now impossible.

I say, therefore, that if your Lordship is not perfectly satisfied that the Plaintiffs have made out their fundamental allegation of the original Suniism of the Khojahs, the Bill must be dismissed. Should the Plaintiffs be successful in their attempt to oust the non-Suni party from, what is called, the "caste property," the result will be, that the latter will still call, and consider themselves, the true Khojah Jumat they will still be in communion with the Khojah Jumats at Bhooj, Bhownuggur, Muscat, and other places: they will still acknowledge, and probably, with more devoted zeal than ever, Aga Khan to be their spiritual chief. It is impossible to separate him from his adherents, or to hold him up as the Jonah, whose ejection would restore peace to the community. Both parties are agreed that they must be separate, each from the other. In his evidence, Rahimbhoy Hemraj said, "of course those who do not act according to the (Suni) religion cannot be allowed to use the property of the Jumat; none but Sunis." The two sections are mutually exclusive. If the Plaintiffs fail to persuade the Court that they—the Suni party—are the true and original Khojahs, their prayer against the Aga must be dismissed, as well as their prayer against the Defendants, who are of the Aga's party.

**THE JUDGE :** The Court will have to consider 1st—Do the Plaintiffs make out their case that the Khojahs are Sunis? 2nd—Do they make out that the Khojahs are mixed Sunis and Sheas? and, if the latter

is the case, whether the decision of the majority must not be confirmed?

Mr. HOWARD. And then there comes another issue, namely, as to whether the funds in dispute are trust funds for charitable purposes? Supposing your Lordship is satisfied, as I have no doubt you will be, that the property was purchased by the Jumat with funds paid by members of the community, as tribute to Aga Khan, you will hold that the Aga cannot be turned out of possession of the property, which really belongs to him, and not to the Jamat, or to charity.

Before proceeding to examine the case made by the Plaintiffs upon this very important, and fundamenal issue, of Sunnism, or non-Sunnism, I desire to clear away a great amount of irrelevant matter introduced into his speech by my learned friend Mr. Anstey. He went on for hours spinning a web of vituperation against the She as (to which great division of the Mohamedan world, the Aga and his party belong), on account of the errors and misdeeds of sectaries of every conceivable nomenclature, with whom he attempted to connect them. At one time it was the Mazdakians, then the Khattabians, the Goalites, and other obsolete heretics, preachers of blasphemy, and practicers of I know not what immoralities; for all of which the Aga's party were made responsible. An immense number of bad names was showered on the Shea sect; and I now propose to analyse this elaborate indictment and to show, as shortly as possible, that what was said was either irrelevant or untrue.

The first point urged with much pertinacity, both by Mr. Anstey and Mr. Scoble, was, that the Sheas are not Mohamedans at all. No doubt fanatical Sunis hold that doctrine strongly, and it is easy to find Suni authorities to support it. It is difficult, however, to see how it is to be used as a legal argument in the case. If all that is meant is that the Defendants, who are Sheas, are not entitled to participate in the benefit of a Suni Mohamedan charity, I certainly should not deny that proposition. But if it is meant that this Court will not recognise Sheas as a distinct sect of Mohamedans, I say that the Shea law is undoubtedly recognised in English Courts of Justice in India.

This was shown by the Advocate General who referred to the case reported in *Moore's Indian Appeals*, vol. 2., page 441, where it was distinctly held that the Shea Imamies were entitled to have their own laws applied to them. In the Khojah females suc-

cession case, reported in *Perry's Oriental Cases*, Sir Erskine Perry decided that Mohamedan Dissenters were entitled to the benefits of their customs, although those customs were confessedly opposed to Mohamedan law. That was a very strong doctrine to reconcile with the provisions of the Charter of the Supreme Court, but it has never been appealed against, and, until overruled, it stands as law. It is clear then, that the Defendants, as Sheas, are entitled to have their own law administered to them.

I will now refer your Lordship to the *Preliminary Discourse to Hamilton's Hedaya*, page 18. This answers the statement of Mr. Anstey, as to the extreme insignificance of the Sheas as a Mohamedan sect. Even if the facts were so, it would, I apprehend, have no legal consequence. But Mr. Hamilton states the fact differently: "From this period the posterity of Ali sunk into insignificance, except in the eyes of their sectarians. Their descendants, however, under the title of *Syeds*, have spread over India, Persia, Turkey, and the northern coast of Africa, and are held in veneration by the multitudes, as inheriting the blood of the Prophet, and have frequently excited the jealousy of the reigning princes of Arabia and Turkey. In Persia and India, particularly, the memory of Ali and his sons is cherished among the people with a veneration approaching to idolatry, and the latter country exhibits some striking instances of the force of this partiality, which possibly a long lapse of time, instead of weakening, has rather contributed to strengthen. The Mussulman Princes of Hindoostan, are in general Sunis, as well as most of their chief men, the heads of the law, or the ministers of State, whilst the great body of Mohamedans being descended from a Persian stock, or from the proselytes of the first Mohamedan conquerors, adhere rigidly to the principles of the Sheas."

THE JUDGE: Mr. Anstey founded his argument as to the Sheas not being Mohamedan, on the authority of a text in the *Koran*, which shows that no sects are recognised by Mohamed: there is only one orthodox sect.

MR. HOWARD: Yes, my Lord; so says the Christian Church as to sects also, but the question always is, which is the orthodox sect? I will now refer you to *Morley's Administration of Justice in India*. At page 250, there is the following passage relating to the Sheas of India, in which you will observe that he does not agree with Hamilton as to their

numbers, though he does as to the admissibility of Shia law:—

“The Shia doctrines were adopted by the Persians at the foundation of the Safavi dynasty in A. H. 905 (A. D. 1499), and from that period until the present time have prevailed as the national religion and law of Persia, notwithstanding the violent efforts to substitute the Suni creed made by the Affghan usurper Ashraf and the great Nádir Shah. There are also numerous Shias in India, though but few when compared with the Sunis, and a small number are to be found in the eastern portion of Arabia. During the Mahomedan period of Indian history, the Shias were chiefly confined to the kingdoms of Bijápur and Golconda, their sect never having been suffered to make any progress in Hindoostan where the religion of the State was according to the tenets of the Sunis. Since the British rule, however, those who profess the Shia faith are no longer persecuted, or forced to conceal their opinions, and although the majority of the Mussulmans of India still adhere to the doctrines of Abú Hanifah, the Shia is allowed to celebrate unmolested the tenth day of the Muharram, and to mourn the untimely fate of the virtuous Hoossain and the martyrs of the plain of Kerbela.” In passing I will say that from the difference between Hamilton writing in the last century, and Morley writing last year, assuming that they are both correct, I think we find evidence of the *Sumization* of Indian Mohamedans—a process which has certainly been going on since 1830 among the Bombay Khojahs and probably among other Indian Mohamedans, where the Sunis have had power. The Shias seem to have been forced, first to disguise their religion by the superior power and intolerance of the Sunis, and to have ended by professing Suniism altogether, though they still retain unmistakable marks of their old Shiaism.

Shifting from the legal to the ecclesiastical or theological view of the question, Mr. Anstey told the Court that the Shias are heretics. It would be extremely undesirable for us to bandy texts of the *Koran* like Moollas at a Mejlis, in order to argue a point of this kind; this court is not sitting as a Mohamedan inquest of heresy; but I may observe that Mr. Anstey here merely acted as the mouthpiece of the Sunis—of the bitterly opposite sect—and we all know the spirit of truth and charity in which religious sectarians love to speak of their opponents. It is as much our case, as theirs, that Suni and Shia, mutually excommunicate each other. The fact is important; which

of the two parties is right theologically, we need not contend. If the present enquiry was as to the religious teaching of a charitable school or college, it might be necessary to examine into the true construction of Koranic texts, here——

**THE JUDGE:** You can relieve yourself from the necessity for going into that, Mr. Howard.

**MR. HOWARD:** I am much obliged to your Lordship. I will leave that point, but as also charges of immorality have been made against the Shias at great length, I must be allowed to answer those charges, though shortly. In order to do this——

**THE JUDGE:** I merely point out to you that, sitting here as Judge, I disclaim any capacity for forming a judgment between the theology of the two sects. I do not at all wish to shorten your observations in replying to Mr. Anstey's speech.

**MR. HOWARD:** The charge of immorality is almost equally irrelevant in this suit with that of heresy, but as it was made at great length, I must answer it, in justice to my clients. For that purpose I shall first consider Mr. Anstey's historical sketch of the sects of Islam, which I think was neither very correct, nor very clear, owing to the absence of dates and places.

After the death of the Prophet's son-in-law, Ali, and his two sons, who were murdered in A. D. 660, the family of Ali fell into obscurity. Under the Ommiads, they could, of course, have no political influence, but the living head of the family was revered in the highest sense by his secret adherents, under the title of *Imām*. This term originally meant a person who presides at religious worship. But the followers of Ali understood it in a far higher sense, as signifying semi-Divine teacher. Hence they were called "Imames." The Alites did not in those early days bear the name of Shias. They called themselves "the Just," and the other party, who were in power, were stigmatised as "Rafezis" or "separatists." They never lost the hope of recovering the Khalifat, and looked for the appearance of a Messiah who was to deliver them from oppression. The house of Ommiad lost no opportunity of persecuting the family of Ali, and did their worst to crush them. After the death of Imām Jafr Sadeq, in A. D. 769, the sect of "Ismailies" arose, who traced the Imamic succession through Ismail, Jafr's son, who died in his father's lifetime. Jafr seems to have been a very devout person, and given

to the study of mystical theology. His followers looked upon him and his son Ismail, as especially great among the Imâms. The other section of the Alîites traced the Imamic succession through another son of Jafr, to the twelfth of the series, Mahomed Mehdi, the "Director." This last disappeared from human view, but it is supposed that he is still living, and that he will appear again as a sort of Messiah for the deliverance of the Faithful.

As long as the Ommiads possessed the Khalifat of Damascus, any member of the Alîit cause, as I say, were severely discountenanced. It was at this time that the bulk of Mahomedan tradition was formed under Ommiad supervision. *Muir* in the preface to his life of Mahomet says:—

"The weak and vacillating reign of Othmân nourished or gave birth to the discontents and conspiracy of Ali and his party, who by the murder of the aged Prince, caused a fatal rent in the unity of the Empire and left it a prey to the contending factions of the new competitors for the caliphate. The immediate effect of this disunion was not unfavourable to the historical value of tradition. For although each party would be tempted to colour their recollections by their own factious bias, they would still be conscious that a hostile criticism was opposed to them. And, while as yet there were alive on either side eye-witnesses of the Prophet's actions, both would be cautious in advancing what might be liable to dispute, and eager to denounce and expose every false statement of their opponents. The caliphate of Ali, after a troubled and doubtful existence of four and a half years, was terminated by assassination and the opposing faction of the Ommiads then gained undisputed supremacy. During the protracted sovereignty of this dynasty, that is for nearly one hundred years, the influence of the ruling power directly opposed the superstitious dogmas of the adherents of Mahomet's more immediate family. The authority of a line which derived its descent from Abu Sofîân, long the grand opponent of the Prophet, may naturally have softened the asperity of tradition regarding the conduct of their progenitor, while it aided with perhaps the loudest note, in swelling the chorus of glory to Mahomet. But it would be tempted to none of the distorting fabrications of those whose object was to make out a divine right of succession in favour of the uncle or the descendants of the Founder of Islam, and who, for that end, invested them with

virtues, and attributed to them actions which never had existence. Such in the process of time were the motives, and such was the practice, of the partisans of the house of Ali and Abbâs, the son-in-law and uncle of Mahomet. In the early part, however, of the Omniad succession, these insidious tendencies had but little room for play."

I quote this passage for the facts, not the opinions expressed in it, which are apparently coloured with a certain bias. It was during the first years after the death of the Prophet that sects arose. The Prophet is said to have predicted that 73 sects would arise in Islam. The Arabs held that there were 70 sects of the Magians, 71 of the Jews, and 72 of the Christians; it was no doubt intended that the superiority of the Moslem religion should be indicated by its having one more. Probably even this number came to be much under the truth.

One of the great subjects in dispute among the early sectaries, was as to the nature and attributes of God, and his dealings with mankind. One group of sects, adopted anthropomorphist views, founded on a literal interpretation of the Koranic texts which (like the Jewish Scriptures) speak of the "hand" and "face" of God, and the like: some of them descending into the most disgusting *minutæ*, as to the physical frame of the Almighty. It is amongst these sectarians that we find the Khattâbians, mentioned by Mr. Anstey. No doubt they were Aliites, but the attempt made to connect them with the Persian, or modern Shias, the school of Islam to which Aga Khan and his followers belong, was an anachronism. Your Lordship will recollect, that Mr. Anstey, on this point, quoted the following passage from *Salé's Preliminary Discourse to the Koran*—"a tenet of the Khattâbians, or disciples of one Abûl Khattâb is too peculiar to be omitted. These maintained Paradise to be no other than the pleasures of this world, and hell fire to be the pains thereof, and that the world will never decay: which proposition being first laid down, it is no wonder they went further, and declared it lawful to indulge themselves in drinking wine and whoring, and to do other things forbidden by the law, and also to omit doing the things commanded by the law." These doctrines are repulsive indeed, but it is really a little too bad to suggest, without a particle of evidence, that the Shias to which the Defendants belong, hold, or ever held, them in any form. As for the history of the Khattâbians I will refer your Lordship to a genuine Mahomedan authority in *Sylvestre De Sacy's Exposé de la*

*Religion Des Druses.* (The Druses, I may state, are an off-shoot of the Ismailies). M. de Sacy in his preface gives a sketch of the early sects of Islam extracted from *Makrizi*, an old Mahomedan writer on the topography of Egypt. Makrizi, writing in the 10th century, explains that the sect who were guilty of incest and other immorality referred to by *Sale* were the Moammeris, a branch of the Khattâbian anthropomorphists in the early days of Islam, centuries before the name of Shia was known. The passage is as follow :

“ Parmi les Rafédhis, une des sectes les plus considérables cest elles des Khattabis, qui appartiennent á la classe des anthropomorphites, ont oné vénération sans bornes pour l'imam Djafar Sadik. Ils sont subdivisés en une multitude de branches ; les uns, comme les Moamméris, enseignent que le monde n'aura point de fin, que le paradis ce sont tous les biens que arrivent a l'homme en ce monde, et l'enfer tous les maux qu'il y éprouve. Ils permettent l'usage du vin, la fornication, et toutes les choses prohibées par la loi, et soutiennent que l'on ne doit pas faire la prière. Il n'est pas douteux par ce que nous verrons tout a l'heure de la doctrine des Khattabis en général, que ces dogmes licencieux étaient une conséquence de l'explication allegoréque qu'ils substituaient au sens littéral des textes de l'Alcoran. Les Moammeris enseignaient aussi le dogme de le métempsychose. Les Bézighis, autre branche des Khattabis, disaient que Djafar est dieu, que les hommes, ne le voient point, mais qu'il trompe leur sens, en sorte qu'ils s'imaginent le voir. Ils accordaient l'inspiration á tout fidèle, et soutenaient que, parmi eux, il y avait des hommes plus excellents que les anges Gabriel et Michel, et que Mahomet. Ils pre-tendaient que leurs morts leur apparaissaient matin, et soir. Il y eut des Khattabis auxquels on donna le nom d'*Omaris* parce qu'ils disaient qu' après la mort d'Abou 'lKhattab il avait eu Omair fils de Bèyan pour successeur á l'imamat. Ils dressèrent une tent á Coufa ou ils se rassemblaient pour rendre leur culte á Djafar Sadik ; mais Yezid, fils d'Omar, l'ayant appris fit pendre leur Imam, Omair fils de Beyan, Toutes les sectes des Khattabis reconnaissent que l'imam Djafar leur a laissé comme en dépôt un peau nommée *djifr* qui contient tout ce dont ils peuvent avoir besoin pour connaître les choses occultes, ou interpreter l'Alcoran.”

Here are peculiarities which no one could pretend to impute to the Shias.



**THE JUDGE:** But apart from the Khattabians being orthodox, is there no proof they were not Shias? We Europeans take our view of Mahommedanism from Suni writers.

**MR. HOWARD:** The sect of Khattabians, existed before the Shias *eo nomine* were known.

**THE JUDGE:** Then I may take it that the Khattabians were not Shias?

**MR. HOWARD:** Yes, certainly, my Lord. They were an obscure and transitory sect of the early days of the Mahomedanism. The Moammecris were not Shias, except so far as they maintained the claims of Ali's family to the Khalifat.

Again among the early sects of Mahommedans some took a higher view of the character of Ali than others. Some went so far as to believe that he was an incarnation of God, for which opinion they were reproached by the opposite party, as being blasphemers. In order to appreciate this condemnation, it is necessary to remember that one of the chief grounds of complaint by the orthodox doctors was, that the blasphemous doctrine of an incarnation was borrowed from the Christians. In *D'Herbelot's Bibliothèque Orientale* it is said under the article *Nossarioun* :—

“Ce mot, qui signifie les Nazaréens, secte de religieux ou de gens dévoués à dieu parmi les Juifs, signifie aussi une Secte de Chrétiens, que confondoient les dogmes et les observances du Judaïsme, avec les principes et les loix du Christianisme.

C'est aussi le nom d'une Secte particulière des Schrites, ou sectateurs d'Ali parmi les Musulmans qui croyent que la Divinité s'est jointe et s'est unie a quelques uns de leurs Prophètes et particulièrement à Ali et à Mahommed Ben Hanïpha ou de ses enfans. Car ces Sectaires croyent, que la Divinité peut s'unir corporellement avec les hommes et la nature humaine pareillement avec la Divine. Ce sentiment est reprouvé par les autres Musulmans, qui reprochent aux Nossariens, d'avoir puisé cette Doctrine dans les livres des chrétiens.”

The “Ghullat,” or exaggerators another Alute sect were mentioned by Mr. Anstey—the Ghoalites, I think he called them. They were extravagant adorers of Ali. But it was before the formation of the Shia theology under the Safavi dynasty, this sect arose, and decayed, and the same may be said of the other sects mentioned by him. There seems indeed to have been wonderful activity of mind

among the Mahomedans in the first century or two after the death of the prophet, not in Arabia only but in various parts of the Moslem world. The disputants included among their numbers the most subtle-minded races of that age, the Syrians and the Egyptians, among whom so many strange Christian heresies also took their rise. All kinds of doctrines were promulgated under this intellectual stimulus. All these sects (the Alutes in particular) under the Abbasides were subjected to extreme persecution, which by natural reaction, produced extreme zeal and fanaticism in the victims. Nothing is more remarkable in the history of these early sects, than the fact that the heads of them, almost invariably suffered a violent death. They appear to have been always treated as criminal by the Khalifs, and on some occasions, immense numbers of their followers were slaughtered with them. The Kharejites are said to have lost 1,00,000 of their number in one tremendous massacre.

It was in A. D., 837 that a new stimulus and direction was given to the doctrines of the sectarians by the translation into Arabic of certain books of Greek Philosophy, under Khalif Maimoun (the 7th of the Abbasides). From that time, mystical, and metaphysical speculations of a new stamp began to appear in the world of Islam, and I think we have manifest indications of this Greek influence in the sacred writings of the Druses, translated by *De Sacy* in the work which I have already quoted. Referring to *Von Hammer's History of the Assassins*, translated by Dr. Wood (not a good translation) we find, at page 27, the following passage:—"In the reign of Maimfun, the Seventh Abasside Khalif, when translations, and the invitation to Bagdad of the literati of Greece and Persia, had caused the seeds of science, already planted, to bloom in full luxuriance—the spirit of the Arabian, which was now imbued with the systems of Grecian philosophy, Persian theology, and Indian mysticism, shook off, more and more the narrow trammels of Islamism. The appellation of Mulhad (atheist) and Sindik (Libertine), became constantly more and more common with their cause, and the wisest and best informed of the Khalif's Court were thus stigmatised." Now, my Lord, this well illustrates the charitable and veracious nature of the self-styled orthodox authorities on whom Mr. Anstey relies to discredit the school to which my clients belong. The ancient Persians as we know, had a purer faith than any of the heathen nations of antiquity, except the Jews, and yet their name among the Moslems "Sindik," that is

a Zendian, meaning a Magian or Parsi, is used by the Sunis as equivalent to *libertine*. *D'Herbelot* tells us, that among Mahomedans and Arabs, the title "Zendik" meant, an infidel, a person who was neither Christian, Jew, or Mahomedan, and he gives under the article, *Ghebr* (a term applied to the Magians, from *Giaour*, infidel) an amusing story showing the prejudice the Mahomedans had against these poor worshippers in the ancient Zend tongue, whom they charged with immoral orgies. *D'Herbelot* says, the word "Ghebr" is Persian and that it signifies in particular a Zoroastrian, a worshipper of fire. The article relates that some young men in Mecca having become very dissipated, were suspected of frequenting the house of a Zendica, and there joining in unhallowed orgies. The Sheriff could get no direct proof against the house-owner so he hit upon a stratagem. He got all the donkeys of the bazaar together, and when they were let loose, all the animals went to the suspected house, where they stopped. That was taken to be convincing evidence against the owner of the house, who was condemned and about to be whipped, but at the last moment, procured a release by suggesting that the Arabs would be laughed at, all over the world, if it was known that when the testimony of men failed, they resorted to that of asses.

The Sufis again, have also been dragged into my learned friend's speech, and after being called by very hard names, without reason, have been identified with the Shias, without authority. The speculations of the Sufis in Persia, were probably derived, to some extent from the neo-Platonic books. The Sufis however, are not necessarily Persian nor Shias, nor even Mahomedans, some of them are Hindoos. Their writings much resemble in spirit, the mystical Jewish poem which is called the *Song of Solomon*. There is therein the same expression of the love of God, under the terms of earthly affection. One is also reminded of the reveries of St. Bernard and St. Theresa. The gross and disgusting story told by Mr. Anstey, of Shebli a Sufi may very likely be true; highly strained religious persons seem always in danger of falling into fleshly temptation, but it is no imputation (as he seemed to put it) against the whole Sufi school. The Sufis are, or were ascetics, of the most severe and rigorous character, and if there is any credit in being an austere ascetic, they most undoubtedly as a school, deserve that credit. But I repeat, the Shias are neither responsible for the doctrines nor the practice of the Sufis.

The last sect I shall mention among those selected for reprobation by Mr. Anstey is, the Mazdakians, who were called by many hard names, and then were attempted to be connected with the Shias. Now Mazdak was the head of a strange religious sect before the time of Mahomet. Mazdak lived in the reign of Nushirawan the Just (by whom he was beheaded) and he did certainly preach the doctrine of a community of women, which he grounded on the fact (observed before his time by the Roman poet, that women are the most fruitful cause of quarrels and wars among men). He also instituted socialism in respect of goods. These my learned friend following Sale, called "the devilish doctrines of Mazdak." No doubt we, in the 19th century, are not disposed to favour Mazdak's experiment of the community of women. English people are also very averse to socialism, though some most benevolent and clever men are at this day engaged in developing socialistic schemes, as the only hope for mankind, but to speak of these questionable clothets, as "devilish doctrines" is a misconception of the real nature of communistic enthusiasm. However, it has not even been pretended that the community of women, practised in this wild pre-Mahommedan sect, prevails or has ever prevailed among the Shias or among the Ismailies.

In one word all these strange sects were anterior to the formation of the Shia school of theology, and even the name of Shia. It was about A. D 950, when the Bowaid dynasty ruled at Bagdad, that the name of Shia was first used to denote the Alites. It is applied by modern writers to sects before that date, but as we may say, by way for anticipation, and not correctly; in the same way it would be erroneous to talk about "Tories" at the court of Charles the 1st, though we should quite understand what was meant. Under the support afforded by the Bowaid dynasty, the Shias became a great school of Islam, opposed to the Suni school. The teaching of the other Aliite sects then gradually lost its distinctive character, and, according to political circumstances chiefly, the various nations who made up the Moslem world attached themselves to one or other of the two leading schools. Strange doctrines and wild practices disappeared with the discontinuance of persecution. All the partizans of Ali of course ranged themselves under the Shia banner, and so, I think it is incorrect for my learned friend to say the Shias are "divided into many sects." It would be more accurate, to say that the Shia School, absorbed and reconciled all the sectaries of Ali—who before, were

divided by many differences of doctrine, for all the modern thirty Shia sects are agreed among themselves in essentials. Then as to the Sunis, who claim a Catholic unity, I believe there are as many differences among them as there are among the Shias, and that appears from the 8th section of *Salé's Preliminary Discourse to the Koran*. But when it is said that the four Suni sects named after the four great legal teachers, are orthodox and all others the heterodox of Islam, one can but smile; this is Bishop Warburton's compendious canon; "orthodoxy is my doxy and heterodoxy is another man's doxy." It is the mere echo of Suni authorities *Von Hammer*, who displays a strong partiality for the Sunis, candidly admits (at page 16 of the *History of the Assassins*) that the reason why the Sunis are regarded as the orthodox, is because all the Mahommedan authorities known to Europeans are Sunitic. So *Dean Milman* in his notes to Gibbon, regrets that the Shia accounts of the early dissensions of Islam, are not accessible to Europeans, as the Suni accounts have been hitherto our sole guides. If we had those Shiah works, we should be better able to judge of the controversy, which divides the two parties. The fundamental point of difference between the Sunis and the Shias, is of course as to the succession to the Khalifat and the doctrine of a living Imâm.

The first Shia era commenced, as I have stated, with the establishment of the Boward dynasty at Bagdad; the second, with the establishment of the Fatimite dynasty in Egypt in A. D. 918; and the third, with the accession of the Safavi dynasty in Persia. Now can it be said that Mr. Anstey in his speech pointed out one doctrine of the modern, or Persian Shias, which, theology apart, they have really cause to be ashamed of? There were two points of this kind, and two only. One was the doctrine of mental reservation; and the other *Matâh* or temporary marriage. Both these he described as censured by orthodox Moslems and in themselves as censurable.

As to the doctrine of mental reservation, I will refer to *Muir's Life of Mahomet* to show that it is not exclusively Shiah. This book, I may say by the way, is particularly valuable, for the author arranges all the Surahs of the *Koran* in chronological order. In the *Koran* itself they are mixed up together without regard to the dates of "revelation." It is wonderful how instructive they become when read by the light of chronology. Now it is true, as Mr. Anstey states, that the Apostle

strongly commands that all Mohamedans should adhere to the faith and even die for it ; but this was after Mahomet had become a conqueror ; and they are the precepts of a powerful intolerant chief who propagates his religion by his victorious sword. There is a kind of Roman pride about them. But in early days when he went into battle with six camels, and one horse, he was more indulgent and less exacting. At page 73 of the Introduction to Muir's *Life of Mahomet*, there is a story showing that pious frauds were allowed and even enjoined by the apostle under circumstances of danger. Muir says :—

“ The system of *pious frauds* is not abhorrent from the axioms of Islam. Deception, by the current theology of Mahometans, is allowable in certain circumstances. The Prophet himself by precept as well as by example encouraged the notion, that to tell an untruth, is, on some occasions allowable, and what occasion would approve itself as more justifiable, nay meritorious, than that of furthering the interests of Islam ? The early Moslems would suppose it to be fitting and right that a divine religion should be supported by the evidence of miracles, and they no doubt believed that they were doing God's service by building up testimony in accordance with so laudable a supposition. The case of our own religion, whose purer morality renders the attempt incomparably less excusable, shows that pious fabrications of this description easily commend themselves to the conscience, where there is the inclination and the opportunity for their perpetration.

At the present day, among the Sunis there are four things in respect of which mental reservation is allowed to a Moslem ; one being for the sake of saving one's life ; another, to effect a peace or reconciliation, another, the persuasion of a woman, and the fourth, on the occasion of a journey or expedition.”

The authority for this statement of *Muir's* is the *Kâtib al Wackidi*. (I am told, my Lord, there is a Bombay gloss on one of these points: to the effect that if your wife asks you for money to buy jewels, you may make her a promise, without intending to carry it out.) (Laughter.)

THE JUDGE : Oh, I dare say, Mr. Howard ; I was not aware of the existence of such a state of things here. (Laughter.)

MR. HOWARD, in continuing, said : I do not think it lies in the mouth of these scrupulous people the Plaintiffs, therefore, to condemn the doctrine of mental reservation, held by the Shias, as a breach of

the faith of Islam. Looking at the point historically, there was good reason for this doctrine being developed among the followers of Ali, who were cruelly persecuted, and were taught reserve as the only means of preserving their lives and their religion.

With regard to *Matdh* or usufructuary marriage practised in Persia the suggestion is, that it is something horribly impure and alien to the doctrine of Mahomed. This is quite a mistake. *Chardin* fully describes this sort of marriage as a civil contract, in which he seems to find nothing revolting. The fact is, it is a lower form of marriage employed not to gratify licentiousness but to satisfy the scruples of the Shia divines ; it is a legal concubinage very similar to concubinage in the old Roman law ; and the Shias appear to use it or to have used it, so that if they keep a woman, not a legal wife, they may not be violating the law of the Prophet against fornication. The Sunis have perhaps been less nice. As it seems to be imagined that the practice is not by origin a Mahomedan practice at all, I will refer your Lordship to the 3rd volume of *Muir's Life of Mahomet* where the subject of temporary marriage is treated of. At page 306, there is this passage.—

"The tone of Mahometan manners may be imagined from the functions of the temporary husband hired to legalize re-marriage, with a thrice divorced wife, having passed into a proverb. Such a flagrant breach of decency, such cruel violation of the modesty of an unoffending wife, may be an abuse, the full extent of which was not at the time contemplated by Mahomet ; but it is not the less an abuse, for which, as a direct result of the unnatural and revolting provision framed by him, Mahomet is justly responsible." The note to this passage is as follows : "*A thousand lover's rather than one Mostahil.*" Many lovers or gallants cause less shame to a woman than one Mostahil. According to the Moslem law, a person who has (thrice) divorced his wife, cannot remarry her, until she has been married to some other man, who becomes her legitimate husband, cohabits with her for one night and divorces her next morning, after which the first husband may again possess her as his wife. Such cases are of frequent occurrence—as men in the haste of anger often divorce their wives by the simple expression, which (thrice repeated) cannot be retracted. In order to regain his wife, a man hires (at no inconsiderable rate) some peasant whom he chooses from the ugliest that can be found in the streets. A temporary husband of this kind is called

Mostahil, and is generally most disgusting to his wife. *Burckhardt's Arabic Proverbs*, p. 21. Tradition and law books abound with fetid commentaries illustrative of this subject, and with checks against the intermediate marriage and cohabitation being merely nominal. Some commentators hold the practice as described by Burckhardt to be illegal; whether legal or not, we may hope for the interest of morality that it is not so frequent as he represents it to be. But its existence is undoubted, and it has existed, in a more or less revolting form, ever since the verse which I have quoted was revealed. A case is mentioned by tradition in which Mahomet himself insisted on the fulfilment of the condition of cohabitation with another husband, before the original union could be returned to, in language which I am willing to believe the prurient tradition has fabricated for him. It must not be forgotten that all the immorality of speech and action connected with this shameful institution, and the outrage done to female virtue (not necessarily as a punishment for any fault of the wretched wife, but often from the passion and thoughtlessness of the husband himself), is chargeable solely and exclusively to the verse of the Koran quoted above. It is a very sorry excuse that Mahomet wished thereby to check inconsiderate divorce; a good object is not to be sought for through such abominable means."

THE JUDGE: Then it appears that, under some circumstances, a man may be regarded as a temporary husband by the orthodox Mahomedan law?

MR. HOWARD: Yes: Next I will refer to the *Dabistan* or School of Manners; certainly one of the most interesting and amusing books I ever read. At pages 87 and 88 of the 3rd Vol. of the *Dabistan*, it is said:—"His Majesty Akbar said one day that he heard from Shaikh Abdul Nabi, that one of the chief lawyers of the Sonnites declared the taking of nine wives to be legal, whilst other learned men denied it, and quoted the passage in the Koran.

"Take in marriage such women as please you, two or three, or four."

There is a note to this passage, my Lord, which says: "Others translate, 'two, and three and four, consequently, nine wives; as the conjunction, *wa*. in Arabic, may mean or as well as *and*.'" "The text goes on to say:—

"As even eighteen wives were said to be legal, then the learned gave the decision that it may be admissible, by the mode of *metah*;



a temporary agreement, by means of which the obtainment of women is facilitated for a certain price, and this is permitted pursuant to the creed of the Imám Malík."

In a note to this it is said "the passage in the Koran favourable to temporary marriage is in Chapter IV., v. 28." "For the advantage, which you receive from them, give them their reward (assign them their dower), according to what is ordained, but it shall not be criminal to make any other agreement among yourselves, after the ordinance shall be complied with." This passage is a distinct authority that *matáh* was sanctioned by Suni doctors in India.

This sort of marriage is also admitted in the great Suni Law Digest, the *Héedayá fil forú*; "the guide in the branches of the law" (translated into English by Charles Hamilton, 1791). "Nevertheless it was a subject of great contest among the Mahomedan doctors, whether such a connection be legitimate or not. The Imám, Abu Hanifa, and others, declared it abrogated, according to the universal concurrence of the prophet's companions, on the authority of Ebn Abbas Abdallah, who died Hej 68 (A. D. 687). This Imám adduced the information received from Ali, who, on the day of the combat of Chaibar, A. D. 630, heard the Prophet declare that such marriages are forbidden. Moreover, a strong opposer to their legitimacy was *Yahia*, the son of Aktam, son of Muhommed, son of Katan, a celebrated judge, who died in the year of the Hejra 242 (A. D. 856). Living during the reign of Mamun, he succeeded in persuading the Khalif, to prohibit by a decree temporary marriage, which he had before permitted" (see Abulfeda, Vol. 11, pp. 195-199).

(At the rising of the Court on Friday, Mr. Howard closed his remarks with the above passage. On the assembling of the Court on Saturday, he recommenced by saying), I found the passage in *De Sacy's Religion des Druzes*, to which I wished yesterday to refer, but could not lay my hand on it. It is an extract from *Makrizi*; it appears at page 49 of the Introduction, and describes the Khattabians, with whom Mr. Anstey wished to connect the Shias. *De Sacy* says, "The Khattabians, who belong to the anthropomorphist class, have an unbounded veneration for the Imam Djafar Sadek, &c." Now, my Lord, there is no pretence for saying that the Shias are, or ever were, anthropomorphists; therefore, the evil practices of the Khattabians have no weight as a means of discrediting the Shia sect.

" I now wish to add a word as to the practice of mental reservation by the Shias, which Mr. Anstey said was forbidden by Mahomed. Mr. Anstey was at the pains to discriminate the particular department or stratum of hell assigned by Mahomet to "Hypocrites," meaning (so he asserted) those who practise mental reservation. The only authority he gave was the following passage, at page 65 of *Sale's Preliminary Discourse to the Koran*. "As to the punishment of the wicked, the Mahomedans are taught that hell is divided into seven stories, or apartments, one below another, designed for the reception of as many distinct classes of the damned—the first, which they call Jehennam, they say will be the receptacle of those who acknowledged one God, that is, the wicked Mahomedans, who, after having there been punished according to their demerits, will at length be released. The second, named Ladhâ, they assign to the Jews; third, named al Hota-ma, to the Christians; the fourth, named al Sâir, to the Sabians; the fifth, named Sakar, to the Magians; the sixth, named al Jahim, to the idolators; and the seventh, which is the lowest and worst of all, and is called al Hâwiyat, to the hypocrites, or those who outwardly profess-ed some religion, but in their hearts were of none." Now, my Lord, it is abundantly clear that this definition cannot apply to the Shias. There must be a desperate amount of *odium theologicum* in any Sunni divine who maintains against the Shias the charge that they have no religion at all. And there is no pretence for the suggestion, that the text in question makes mental reservation a damnable sin.

Now, leaving the primitive era of Moslem heresies, can it be said that the Shia theology as settled in quieter times—the accession of the Safavi dynasty in Persia—is to be charged with inculcating wild doctrines, anti-social institutions, or immorality? The date of the accession of the Safavi dynasty was A. D. 1499, and the doctrines then adopted by the Persians, under their auspices, that is, what is properly called Shia theology, were much influenced by historical circumstances. For 800 years previously, Persia had suffered under the cruel persecutions of the Arabs, its national life had been all but stamped out. The Magians or Parsis had been almost exterminated, and the remnant cowered under the opprobrious name of "libertines." The age of persecution had also left its mark on the partizans of Ali's family, under the Arab yoke. Hence the prevailing practice of mental reservation, of outward conformity, and secret belief. During the

whole term of Suni supremacy, there was never wanting in Persia a secret current of opposition, and of adherence to the family of Ali. Although the Persians outwardly performed Suni rites, they mourned for the Saint and Hero with whom their real religious feelings were inseparably connected. The name of Ali was the constant watchword of insurrection, and there was never absent the rumour of some Imâm or Messiah, who was to deliver them from the oppressor.

There can be no doubt the Shia theology deflected somewhat from the Shemitic spirit which inspired the first publication of Islam, and that it was a temperate endeavour to steer a middle course between paganism and the narrow, cruel, jealous monotheism of the Arab Sunis.

The Shiah theologians, whilst reverencing the *Koran*, enriched the tautologous creed of "God is God," with a more human element, and taught the mission of Ali, whom they honoured as the most perfect of men, and even as something more, saying of him, "Thou art not God, but thou art not far from God." He was to them the "Light of God."

The Sunis denounce the constructive blasphemy of this praise of Ali as a quasi divine incarnation, just in the same way as the Jews condemn the leading tenet of the Christian faith. They even charged the Shias with picking this portion of their theology from the Christians. Indeed it may have been the fact that the Shias derived their ideas of Ali, of a semi-divine man, of a mediator, from the Christians, though some say it was from the Magians. Then the feminine element was not wanting in the Shia system; that element which has been so powerful in softening and refining Western Christendom, which has inspired so much divine poetry and art, which was the leading idea of chivalry, and which has had so much to do with the formation of the modern European character. I refer, my Lord, to the honour paid to the memory of Fatima, the daughter of the Prophet and the wife of Ali.

I shall now read some extracts from authorities, in illustration of the difference between Shia and Suni theology. *Baron Von Hammer*, observing that the two great schools of Islam, the Sunis and the Shias, hold the same *fundamental faith*, but differ on points of *practice*, compares them to the Eastern and Western Churches of Christianity. The chevalier de Chardin, the great French traveller in Persia, looking to what the Shias have added to the Suni creed, compares

them to the Roman Catholics, and the Sunis, to the Protestants : in which case *Gibbon's* sneer is equally applicable to both the Moslem and Christian world—that the heterodox was more hated than even the open enemy of the faith. But looking at the schism of Islam in all its aspects, I have been led rather to compare the theology of the Shias to Christianity as developed from Judaism. It is milder, less formal and more human, than the theology of the Sunis. In a word it is Aryan, or Indo-European in spirit, as distinguished from the Shemitic ground work of Mahomedanism.

One marked characteristic of the Shias in Persia,—which I have already referred to—was, that during the whole of the long period of oppression and cruelty in which they lived under the Sunis, they never lost the traditions of their Alite faith, though they practised Suni forms under mental reservation. Indeed it was by that system of secrecy alone, that those traditions were preserved in their memories. After the establishment of Shiism in Persia they did not renounce the duty of going on pilgrimage to Mecca : but Mecca was in the hands of the Sunis who looked upon them as further removed from the truth than even the Jews or Christians. The consequence was, that the Shia pilgrims were oppressed and annoyed in every possible manner, when they visited the Holy places. And to protect themselves, when they came to Mecca, they were forced to adopt the orthodox Suni twist of the elbows in praying, and otherwise adopt the forms of Suni worship. Captain *Burton* in his pilgrimage to Mecca, gives a very graphic account of the behaviour of these wretched Persians there :

He says :—In describing his visit to the Haram, or the Prophet's Mosque at El Medinah ( Vol. 2., page 250 ) :—

“My old friends the Persians—there were about 1200 of them in the Hajj caravan—attracted my attention. The door keepers stopped them with curses as they were about to enter, and all claimed from each the sum of five piastres, whilst other Moslems are allowed to enter the Mosque free. Unhappy men ! they had lost all the Shiraz swagger ; their mustachios drooped pitiably, their eyes would not look any one in the face, and not a head bore a cap stuck upon it crookedly. Whenever an “Ajemi,” whatever might be his rank, stood in the way of an Arab or a Turk, he was rudely thrust aside, with abuse, loud enough to be heard by all around. All eyes

followed them as they went through the ceremonies of ziyarat, especially as they approached the tombs of Abubekr and Omar which every man is bound to defile if he can—and the supposed place of Fatimah's burial. Here they stood in parties, after praying before the Prophet's window ; one read from a book the pathetic tale of the Lady's life, sorrows, and mourning death, whilst the others listened to him with breathless attention. Sometimes their emotions was too strong to be repressed. "*Ay Fatimah, Ay Manumah! Way! way!*—O Fatimah! O thou injured one! Alas! Alas," burst involuntarily from their lips, despite the danger of such exclamations, tears trickled down their hairy cheeks, and their brawny bosoms heaved with sobs. A strange sight it was to see rugged fellows, mountaineers perhaps, or the fierce Ilyat of the plains, sometimes weeping silently like children, sometimes shrieking like hysteric girls, and utterly careless to conceal a grief so coarse and grisly, at the same time so true and real, that we knew not how to behold it. Then the satanic scowls with which they passed by or pretended to pray at the hated Omar's tomb! With what curses their hearts are belying those mouths full of blessings! How they are internally canonising Fayruz. (The Persian slave who stabbed Omar in the Mosque) and praying for his eternal happiness in the presence of the murdered man! Sticks and stones however, and not unfrequently the knife and the sabre, have taught them the hard lesson of disciplining their feelings, and nothing but a furious contraction of the brow, a roll of the eye, intensely vicious, and a twitching of the muscles about the region of the mouth, denotes the wild storm of wrath within. They generally, too, manage to discharge some part of their passion in words. "Hail Omar thou hog!" exclaims some fanatic Madani as he passes by the heretic—a demand more outraging than requiring a red hot black-north, Protestant to bless the Pope. "O Allah! *hell* him" meekly responds the Persian changing the benediction to a curse most intelligible to, and most delicious in his fellow's ears." There is a note to this passage as follows :—

"I have heard of a Persian being beaten to death ; because instead of saying "peace be with thee, Ya Omar" he insisted upon saying "peace be with thee, Ya Humár ( O Ass ! ). A favourite trick is to change Razi Allahu anhu—may Allah be satisfied with him—to Razi Allahu An. This last word is not to be found in Richardson,

but any "Luti" from Shiraz or Isfahan can make it intelligible to the curious linguist."

*Chardin* writing in the 17th century, describes the negotiations entered into with the Arabs from time to time, by the Shah, for the purpose of ensuring the safety of his subjects when on pilgrimage. This all goes to show that the habit of mental reservation in regard to their religion was forced on the Shias by Suni persecution precisely as alleged by the Khojah Shias in this suit.

(Before reading some extracts as to the Suni and Shia controversy which will not be immaterial as showing what the difference between the two parties really is ; and as the attempt has been made, though without success, to point to doctrines in Shia theology, as morally objectionable, and opposed to public policy, I will point out the one great leading principle of Suniism which most undoubtedly the Court will hold to be contrary to policy and even to the existence of the British Government in India. That is the doctrine of "War on the Infidel ;" for we, the British, are "the Infidel" according to the Sunis, whose doctrine this is ; but if this does not make the Sunis outlaws in this Court how can any obsolete speculations of Rafedhis, or other Aliite sects of primitive times be disinterred for the purpose of inducing a British Judge to show disfavour to the present Sunis ? The Sunis are at this day bound to obey the command of "War on the Infidel," and if the preaching of any dangerous doctrines, opposed to public policy, can put a class of suitors out of Court, it would be the teaching of those who consider it their sacred duty to wage war on the British Government—we have done so,—actually waged this holy war against the British power in this very India, not ten years since. Of course my learned friends will say, that the Court will not act upon inferences, however logical, from religious doctrines, that we cannot suppose people will formally abrogate their religious principles although they in practice, never think of acting on them. This liberal statesmanlike policy is very familiar to us at home with regard to the holders of Ultramontan doctrines, which are absolutely inconsistent with the British form of Government. All Protestants agree that it would be monstrous on that account, to deny to Roman Catholics, absolute equality in an English Court of Justice. In the same way, I say that it is monstrous for my learned friends to pick out scandalous tales from books of all ages and coun-

tries, more or less supposed to affect the Shias, and use them as arguments against the *locus standi* of the Shia defendants.)

In reference to the Suni and the Shia controversy, there are instructive articles in *D'Herbelot's Bibliothèque Orientale*, under the heads "Sounah" and "Schiah." I may here state, my Lord, that although the Sunis so call themselves, from adhering to the Sonna, or written law, yet the Shias also adhere to the Sonna, where the materials are obtained from authorities which both the schools admit; but they do not admit those which were collected under the authority of the Ommiades. The passages in *D'Herbelot*, I shall quote, are as follows:—

**SONNAH OU SUNNAH.** Ce mot Arabe signifie proprement ce que les Hebreux appellant Mischnah, le seconde loy, ou la loy orale, qui n'a point été écrite par le legialateur et qui est seulement tirée de ce qu'il a dit ou fait et conservée par tradition de main en main, par des personnes autorisées.

Le pluriel de ce nom est Sonan et Sunen et plusieurs Docteurs Musulmans ont donné ce titre à des ouvrages, dans lesquels ils ont ramassé tout ce qui est obligatoire et de precepte dans la loy Musulmanne, quoyqu'il ne soit pas expressément commandé dans l'Alcoran. Cependant il ne faut point confondre cette Sonnah et ces Sonan avec ce que les Musulmane quoyqu'il ne soit pas expressément commandé dans l'Alcoran.

Cependent il ne faut point confondre cette Sonnah et ces Sonan, avec ce que less Musulmans appellent Hadith et Hauadith. Car les Hadith ou Hauadith ne sont que des recits Historiques, dont la tradition n'est pas si authentique. Mais la Sunnah est de précepte comme on l'a déjà dit, et sert de regle a de discipline aux Musulmans. Néanmoins, ces deux choses sont souvent confonduës dans les ouvrages des Mahometans. Car il y a plusieurs qui portent le titre de Sonon et qui ne contiennent que des Hadith."

**SCHIAH et SCHIAT.** Ce mot Arabe signifie en général, une Troupe, un Party, et une faction de gens confederez et qui sont une secte particulière en matière de Religion.

Les Musulmans Orthodoxes qui donnent le nom de Suniah à leur religion et profession particulière, donnent celui de Schiah a la secte de ceux que si disent Partisans d'Ali et qui ont quelques observations, et quelques cérémonies et croyances particulières.

Schiahi et Schii, est celui qui est opposé au Sunni et la difference, qu'il y a entre ces deux sortes de personnes, consiste essentiellement en ce qui les premiers croient et professent que le Souverain Imamat, dignité qui comprend toute l'autorité spirituelle et temporelle sur les Musulmans, appartient, de Droit Divin à Ali et ses descendans.

Les Persans sont Schutes, et les Turcs sont Sunnites. Mais cette différence de partis, qui est aujourd'hui entre ces deux nations, a commencé des l'année 363 de l'Hegire sous le Khalifat de Mothi Lillah, l'Abbasside. Car ce fut pour lors que les Schiites se rangerent du party de Sultans de la Race des Boudes, et le Sunnites prirent ceux des Turcs, qui étoient alors très-puissans dans la cour des Khalifes, et ce furent enfin les divisions et les divisions et les dissensions de ces deux Partis, qui furent la cause de la ruine de Bagdet, et du Khalifat des Musulmans, comme l'on peut voir dans le litre de Mostâdhem, dernier Khalife des Abassides.

Le Schiites ou sectateurs d'Ali, n'appellent pas leur secti Al Schnât, nom qu'ils croient leur être mujeux. Mais ils luy donnent le titre magnifique de Alâdeliat, c'est-à-dire, la secte des justes. Voyez le titre de Ali ; où le sujet de cette séparation des Schutes d'avec les Sunites est plus amplement expliqué.

Ces Schutes sont encore divisés entres eux en cinq sectes différentes. Les Kessabiens, qui en sont une, ont des sentiment fort extravagans. Ils croient qu'Ali étoit plus qu'homme et que le Mahadi vit encore. Ils comptent aussi la descendance des douze Imams de la posterité d'Ali d'une manière différente. Car les uns s'attachent à la branche de Hassan, fils aîné d'Ali, et les autres à celle des Housain, qui étoit son cadet.

Il y en a même qui ont suivi le party de Mahommed Ben-Hanifiah, qui étoit fils aussi d'Ali ; mais d'une autre femme que Fathimah, fille de Mahomet. Les uns ont pris le party du Mahdi l'Afriquam, fondateur de la Dynastie des Khalifes Fathimites d'Egypte, qui sont les Ismaeliens d'Afrique et les autres ont pris celui des Ismaeliens de l'Iraque Persienne, dont la Dynastie a pris son origine de Hussan Sabah.

Les Persas d'aujourd'hui sont de la secte Haïdarienne parce qu'Ismael Sofi, fondateur de la dynastie qui règne aujourd'hui en Perse, étoit fil de Scheikh Hardar, arrière petit fils de Scheikh Sofi, qui prétendoit descendre aussi d'Ali.



Plusieurs Schiïtes croient la Ténasoukhiah, qui est la métépsychose et la Houloubiat, qui est une communication de l'esprit dessainteté qui se transmet de l'un à l'autre et enfin ces cinq principales sectes des Schiïtes sont comme cinq arbres qui se divisent en soixante et dix branches. Cependant ils conviennent tous en ce point, qui consiste à regarder les Khalifes Abou Bekr, Omar et Othman que le Sunnites ou orthodoxes reverent beaucoup comme des usurpateurs du Khalifat et de l'autorité suprême dans le Musulmanisme, qui devoit selon eux passer immédiatement de Mahomet à Ali qui ne fut cependant que le quatrième Khalife.

C'est par la même raison qu'ils détestent la mémoire des Khalifes Omniades, qui firent mourir Houssain fils d'Ali, duquel ils déplorent encore tous les ans la mort, et rejettent aussi les Khalifs Abassides, quoique Parens de Mahomet, comme Haschemites, parce qu'ils ne descendoient pas d'Ali.

L'on peut voir dans le titre de Mamon le violent scrupule, que ce Khalife eut de posséder le Khalifat au préjudice des Alides, et de quelle manière il le leur vouloit restituer, en déclarant pour son successeur Ali Ridha, qui tient le huitième rang parmi les Imams."

It is important, my Lord, to remember, that this is the real distinction between them. The turning point in the controversy, is the question, who was the lawful successor of the Prophet, the Shias fervently supporting the claim of Ali and his family. As further exhibiting the difference between the two parties I will refer to page 126 of *Sale's Preliminary Discourse to the Koran* in which he says: "It may be proper, however, to mention a word or two of the great schism at this day subsisting between the Sunnites and the Shiites, or partizans of Ali, and maintained on either side with implacable hatred and furious zeal. Though the difference arose at first on a political occasion, it has, notwithstanding, been so well improved by additional circumstances, and the spirit of contradiction, that each party detest and anathematize the other as abominable heretics, and further from the truth than either the Christians or the Jews." Now there, the words "partizans of Ali" are used as equivalent to Shiites.

That is the fundamental distinction between the two schools, and I call your Lordship's attention to the fact, that they are so bitterly opposed to one another that each thinks the other further removed from the truth than the Jews or the Christians. I am as anxious as

Mr. Anstey, to insist on the fact that the Sunis do not regard the Shias as Mussulmans, that they hold that non-Sunis cannot use the Suni Jamat Khanna and that the excommunication is reciprocal. They hate one another so much that they cannot use the same building for religious purposes. This has a most important bearing on the issues in this suit. And now I shall refer your Lordship to some passages in *Sir John Malcolm's Translations from the Persian*, given in the 1st Vol. of the *Transactions of the Literary Society of Bombay* (1811).

THE JUDGE: That was the Society founded by Sir James Mackintosh, previous to the establishment here of the Bombay Branch of the Asiatic Society?

MR. HOWARD: Yes, my Lord. The passages commence at page 68, and they occur as "illustrative of the opinions of the Suni and Shia sects of Mahomedans." The first paper, which is a Suni manifesto, addressed to the Shias who had protested against the plunder of Mushed by Moslem invaders, commences thus:

"It cannot be concealed from any one of the true faith, that it is impious to attack the person or property of a Mussulman who believes in God." Then, referring to the dissent of the Shias, it is said:

"It undoubtedly becomes the indispensable duty of the Prince of the faithful, and of all true believers in the world, who desire to fulfil the mandates of the most High God, and to fix and strengthen the true religion,—to kill and extirpate all such, to raze their houses and seize their property, whether in goods or land; and if the kings of the earth in whose hands are power and dominion and the Caliphs (under whose shadow may God order that the faithful find shelter until the great day of Judgment') neglect to combat in this sacred cause, which it has been declared their duty to do by the unanimous voice of the *Ulemah* or holy men, who speak what the Prophet and his descendants have ordained, they shall answer for it to their Creator \* \* \* \*. Above all others, those will obtain that beatitude who are included in the following verse of the divine Koran, "God is well satisfied with the faithful that acknowledged my authority" "The Great God was their guide and they followed him." Can there be a doubt but the three Caliphs, Omar, Othman, and Aboubeker are included in this verse! \* \* \* \*. It follows

from what has been stated, that to deny their perfection is to wander wildly in the maze of error, and in fact to deny the Koran and the Prophets; and those only that believe and follow them are the true followers and believers in the faith; for God commanded our Prophet to say to the world, "You that are the friends of God obey me; and God will be a friend unto and pardon your sins" \* \* \* \* \* The undaunted valour of Aly, the lord of the faithful, is known to the whole world; and yet that prince acknowledged the authority of the Caliphs. Ignorant men do not reflect that if they succeed in fixing obloquy on any Caliphs, they must also fix it on Aly. How can the Shias defend their conduct in loading with abuse Ayesha, when all are agreed that she was the wife of the Prophet and was the favorite of that sacred personage? \* \* \* \* \* How dare the Shias then be so indecent and impious as to abuse the partner of the best of the men? \* \* \* \* \* You have written unto us that it is stated in Holy Writ, "Do not without cause plunder each other's property"; and that it is a sacred precept that it is unlawful to take the property of any Mussulman whatever, unless for his advantage; and you argue from this that the produce and revenue of the city of Mushed cannot be deemed lawful plunder. We have to reply, that these holy sentences and traditions only relate to true believers; and as we have correct and authentic proofs that the sect of Shias abuse the Holy Caliphs (at the same time that they call themselves Mahomedans), we conceive not only the sentences you have quoted, but many others which it is unnecessary to state, have this plain and obvious meaning;—that to put to death, to seize and ravage the property and country of unbelievers, is lawful. No person indeed can deny this; and assuredly those who declare themselves servants of the prince of the faith, but swerve from their truth, must above all others be deemed by the concurrence of the learned, proper and legitimate objects of plunder \* \* \* \* \* You say, on the authority of Holy Writ, that God created men and angels only to obey and adore him. This cannot be controverted; but the obedience and adoration which is acknowledged to be most pleasing to God is to war with infidels, and no mercy should be shown to those who forsake their adoration to their Creator, who abuse the heads of the faith \* \* \* \* \* But though all are agreed that God has cursed Satan, there would appear no good to be reaped from execrating him; and what renders

the present case more extraordinary is, that there are numbers of Shias who really understand the meaning of the holy sentences, and have successfully expounded many of the sacred writings \* \* \*

\* \* Such we must remind of the verse in the Koran which states "That the time approaches when an answer will be required from those who have knowledge."

I shall now quote, my Lord, from the same collection a letter from the Shia divines, intended to answer the foregoing :

"By the style of your letter, I am reminded of a saying in Khras-san, 'He that goes alone to the judge will return satisfied.' The learned men of the sect of Sheeah have had no access to your sovereign, who has been taught that their faith is a new invention, destitute of truth; when he has heard all the arguments fairly urged on both sides, his royal mind will be enlightened and we shall be satisfied with his decision. There are many books of traditions regarding which the Sheeahs and Sheeahs differ, but we desire in this discussion to refer to none as authentic in which both do not profess a belief. The whole of the Mahomedans are divided into two sects, Soonee and Sheeah. The essential difference is this: the former believe that Aboubeker had a just right to succeed the prophet; the latter, on the contrary, deem Murteza Aly the lawful heir, and consider his exclusion an act of impiety and injustice. This difference implies no rejection of the acknowledged traditions to which we mean to refer. Such indeed is not a general principle with either sect, and we object to the protest that any individual may make of this nature \* \* \* \* From all this it must appear obvious that what you have urged against the Sheeahs is from yourself, and is neither supported by the Koran nor the holy traditions. Now we, on the contrary, though aware of the guilt of the Caliphs, do not deem it a duty to curse them; nor indeed is it thought reputable to do so; and if any wrong-headed Shias affirm it to be a duty, they are mistaken; place them in the same rank with those senseless Soonees who deem it a duty to put all Sheeahs to death — neither of these sentiments are inculcated as duties by any authorities of respectability."

The doctrine of plundering the heretic appears to be by no means obsolete among the Sunis; it is heartily concurred in by Mr. Anstey, who asked the Court to take away the Defendants' money because they are not orthodox; and no doubt on the ground, as the Sunis say in

this passage, that it is legitimate to plunder Shias. The Shias do not advance these pretensions. By their answer your Lordship has seen that their tone is very reasonable ; and that they do not assume the uncompromising attitude of their orthodox Suni opponents.

In another of these translations by Sir John Malcolm, there is an amusing story of a public controversy, held in the time of the celebrated Haroun al Raschid, in which the Shia disputant says that out of the 73 sects of Islam, only one, the Shias, will be saved : all the others will be damned.

The next extract I shall trouble your Lordship with, is from the third volume of the *Dabistan*. [Before reading it, I will say I have no doubt as to this being a most valuable book, but with reference to the *Desatir* mentioned in it, which Mr. Anstey wished the Court to accept as the same with the *Dasavtar*, the sacred book of the Khojahs, Mr. William Erskine has clearly shown that it is a modern forgery, and that I can also undertake to say myself. It contains many Hindustani words, showing it is not a pre-Zoroastrian book, which it pretends to be. It has no value whatever. I shall, on the other hand, show that the genuine *Dasavtar*, that is the "book of ten incarnations," is a purely Khojah book, utterly unconnected with pre-Zoroastrian history or fable. I don't indeed see that it would have done my learned friend's case any good to show that the Khojahs used such a book as the *Desatir*, which is not Suni nor even Mahomedan, but if the Plaintiffs told their counsel to say that the old Khojah *Dasavtar* was really this *Desatir*, it was a gratuitous and gross attempt to mislead the Court. Mr. Anstey probably did not know anything about the *Dasavtar*, but the witnesses whom he called did ; and they also knew, that if the true Khojah *Dasavtar* were produced, it would prove the falsity of their Suni pretensions. The *Dasavtar* was produced by us, and then the Plaintiffs did not dare to ignore it, but they said it was only ignorant Khojahs who read it. But the fact is, as I shall show by the universal consent of the Khojahs, it was written by Suddreodeen, who converted their ancestors to Islam.] Now the passage I am going to read from the *Dabistan* is from the third volume, page 63. It relates to a remarkable religious controversy carried on in the presence of the great Akbar, in the course of which there is a battle between a Sonnite and a Shiite : the Sonnite says everything he can against Ali ; and the Shiite defends Ali and taunts the Suni :—

“The Shiah interrupted him, saying ; ‘You are liars from the very beginning. Abu Hanifa, your great Imâm, was a native of Kabul and attached himself particularly to the service of Imâm Jâfr Sadîk ; at last he left him, and professed openly the religion of his fathers, who were Magi. A sign of the Magian creed was, that he thought it right to eat three times a day, and to lay aside all choice of diet, as well as not to reckon the unbelievers impure, saying that impurity resides in the interior, if anywhere, and the like.’

“The Sonnite remarked : ‘Thou thyself agreeest that Abu Hanifa was a follower of the Imâm Jâfr, therefore he most likely practised what was conformable to the religion of the Imâm Jâfr. We do not admit that your people are attached to the religion of the Imâm ; we rather believe that they are Magi ; for when your ancestors were conquered and subjected, they by necessity joined the Islamian, but mixed the right faith with the creed of the Magi, as it appears from the worship called *nôu rôz*, which is a custom of the Magi, according to whom they likewise perform divine worship three times a day. They think it right to turn their head in praying to the left, which is turning off from the Kiblah (of Mecca) ; they assert that the five prayers every day are improper, as they are not able to perform them exactly ; they maintain, however, as requisite those at midday, before sunset, and in the evening on going to sleep. In the same manner they took the Matâh or temporary matrimonial unions from Mazhdakian.’ ”

I quote the passage, to show the sort of imputations which are exchanged between the two parties of Islam ; and this completes my account of the two schools.

Aga Khan belongs, as he says, to the Shia-Imami Ismaili sect. With regard to the term *Imami*, that does not, at all events now-a-days, denote a sect of Shias. It is a term descriptive of their belief in the Imamat and its succession, in the same way that the term “Papists” is applied to Roman Catholics. The belief in an Imâm, is held by all Shias. The precise nature of the Imamat is perhaps not very well fixed. It denotes a spiritual headship in which there is a succession, as in the orders of the Christian Church ; and if we are sometimes startled by the loftiness of the language employed by the votaries of Ali, and the Imâms, we may remember that Popes have arrogated or accepted a superhuman authority : Martin IV. did not rebuke those

who addressed him as "Lamb of God." But Ali was never worshipped in the high sense of the term.

The succession of the Imâms is differently accepted by different sects. The Ismailies are distinguished by other Shias, by their tracing the Imamat, through Ismail, the son of Jâfr, the Sixth Imâm, instead of Mussa. *But all the Imamians are equally Shias*, as shown by *D'Herbelot* in the article "Imâm." Mr. Anstey said the Ismailies were outcastes since the time of the Imâm Jâfr, and a name of reproach even among the Shias (as Protestants might speak of the Jesuits among Roman Catholics, we know very well how fond religious partizans are of calling names). The authority for this statement about the Ismailies was Mirkhond, who was not a Shia writer and who wrote under Tamerlane, a violent anti-Shute. The Ismailies have, indeed, always professed to be Shias of the Imami sect. The Ismailiah sect is connected in history with three political establishments—the Fatimite Khalifs of Egypt; the Druses who still exist in Syria; and the followers of Hassan Sabah who received from the Crusaders the ill-omened name of the "Assassins." The Fatimite Khalifs were as respectable as other Asiatic dynasties, and they deserve the credit of founding the first University, the *Dar-ol-hikmat*, which *Von Hammer* absurdly calls "a lodge," at Kairo. It was known they were the head of the Ismailiah; and all the Moslem world was aware of it. To say therefore the Ismailiah were "outcastes from the time of Jâfr" is a monstrous perversion of facts. By the Abbassides, they were, no doubt, always regarded with hatred, as the most dangerous enemies of the non-Alite rulers. They, therefore, whilst this persecution lasted, kept their religion concealed, and, like the Templars and the Freemasons, and other secret societies of Europe, were accused of all kinds of evil practices which were probably untrue. Before the time of the Fatimite dynasty, the Ismailiah were a secret sect, and it was in this time of danger, during the interval before their leaders assumed the throne, that the strange custom of initiation, by seven or nine degrees, was devised among them. Further in disproof of the assertion that they have always been regarded as outcastes since the time of Jâfr, I may mention, that the late Shah of Persia gave his daughter in marriage to Aga Khan, the head of the Ismailies, made him governor of the districts of Koom and Mahallat, and afterwards of Kerman. Then, too, the grandfather of the

Aga, also the head of the the Ismailies, was governor of Kerman (under Ali Muzad), as was his son, the father of the Aga. They were perfectly well known to be the head of the Ismailiah, as shown by *Watson's History of Persia*, and, no doubt, received their honours from the Shah on that account. These recognitions of the Ismailiahs, by the civil authorities, in recent times, may counterbalance the holy reprobation of *sei disant* orthodox authorities of bygone days. I shall now say a few words as to the secret religious system of the Ismailiahs. My Lord, there was very good reason why they should keep their system secret. Under the Abbassides every Ismaili was burnt or tortured, whenever he was discovered ; for the chiefs of the sect were, of course, the most dangerous enemies of the non-Aliite Mohamadan rulers. Naturally the Ismailies, under alien Sovereigns, kept their secret, if they desired to retain their lives. It may be, as suggested by *Von Hammer*, they borrowed their system of initiation from the Egyptians ; at all events they practised it in self-defence. If they wished to make converts in a foreign and hostile country, they did so with the means that possessed the most practical security. They began by imparting to the convert very harmless teaching, "milk for babes," and after leading him on, step by step, as seemed safe, they showed him what they really were—the believers in an Imâm, and the enemies of non-Aliite Sovereigns. A great deal of vituperation has been poured on this secret system of initiation ; there were seven, or nine different grades, and it is said the novice was thus led to Atheism and immorality. This statement, however, is based on very slender foundation.

As to reserve in religious instruction generally, we know of the Jewish Proselytes of the gate ; of the *disciplina arcani* in the Catholic Church, to say nothing of more sacred authority. I am not a Freemason myself, but I believe there is something of the same kind in the degrees of initiation into that body. No one outside Freemasonry knows what its secrets are, but we have the best possible reason for believing that Masons are a harmless, festive, and benevolent community, yet their secret system has exposed them to fearful imputations, and it is but lately that the Holy Father thought it necessary to denounce them as the enemies of religion and society.

There is but one authority for the received story of the Ismaili system of initiation, and that is *Moshân*, an ancient author who is quoted by *Makrizi* and by *Nowairi*, another almost contemporaneous historian.



They could give no further information than from what they got from *Moshân*, who certainly pretends to relate minutely the nine degrees, and who, like an orthodox Moslem, pronounces the Ismailiah sectaries to be as worthy of condemnation as the Pope thought the Freemasons to be. A little criticism throws a doubt on *Moshân's* account. If such secrecy was observed under such elaborate precautions, how is it,—especially with reference to the higher degrees—that the secret was ever divulged? We are told that women attended the the *dar-ol-hikmat* at Kairo (I believe the Freemasons do not allow this in regard to their "lodges"), and this may be said to account for the grades to which the ladies were admitted becoming a matter of common notoriety; but is this explanation consistent with the general theory?

It is not explained how Akhon *Moshân* came to know the degrees. He was never initiated himself, and was hostile to the Ismailies, whom he calls miscreants and unbelievers. I think it is very possible, the nature of the lower degrees may have oozed out, and that they are correctly given, for they would not do the person who professed them any harm in the eyes of orthodox Mahomedans. But the higher degrees would only be known to a few, and it is extremely improbable they would become divulged. The account given of the method employed by the Ismaili Missionaries—the Dais—is probably correct as general outline,—after allowing for hostile language, and false comments and inferences—but as I have already observed, only two authorities, at second-hand, are available. Makrisi says the Ismaili novice was led by degrees to the Magian religion, and, according to him, that is, as much as to say, infidelity, atheism, and libertinism. The Dais were to exhibit great missionary zeal, and were to build on the religious system of the person addressed, and to begin with Suni arguments to Sunis, and Shia arguments to Shias, &c. First the missionary commenced by puzzling the novice asking him difficult questions about the Koran. Then, having got the novice into a state of great bewilderment, he improved his opportunity, and administered an oath of obedience to him. This completed the first stage of instruction. Then the second degree revealed the Imâmi doctrine as to authority and reason, and the divine mission of the Imâms to teach the religion professed by all the followers of Mohammedanism. That may be a correct idea of the second degree, but your Lordship will see that such a doctrine

was a most dangerous one for the preacher, and we may doubt whether, under Suni rule, it would be confided to the novice at so early a part of his instruction. Then the next and third degree taught the Ismaili succession of the Imâms, that is to say, from Ali, through his descendants to Ismail, the son of Jâfr. As to this degree, I see no reason to doubt the correctness of Makrizi's report. The fourth degree makes known the periods of the Imâms; and after that comes a break in the system; the character of the teaching becomes entirely different, and it is for your Lordship to form your own opinion as to whether the account is at all probable. It is said the fifth degree took the novice through a course of arithmetic and geometry, in which particular numbers, with their mystical significations, were taught, in a most singular method which is perhaps not more absurd than the similar speculations of persons who, even at the present day, pretend, as they say to "expound prophecy." We know that some of the Greek writings were brought to the East before the time when these doctrines were inculcated, and perhaps these mystical numbers were derived from Greek sources. Then the sixth degree allegorised the Koran. It imposed an entire submission to the Imâm, and taught that legal and religious ordinances are contrivances for keeping people in necessary subordination and dependence—

THE JUDGE : With regard to the fourth degree ?

MR. HOWARD : It teaches, that the Imâm will appear at a future age as the Messiah—

THE JUDGE : To establish a sort of Millenium ?

MR. HOWARD : Yes, it is so.

It was with reference to the sixth degree that the Ismaili sectaries called themselves Batenian or "interior." The Greek philosophy is said to have formed part of this stage of the teaching, and if that is true, it is quite clear the sixth degree could only have been taught to very few people. We may indeed say this of the fifth also. I will not say that the arithmetic included in the fifth degree was an overwhelming difficulty in the way of such instruction, but the geometry certainly was, and I will undertake to say that the philosophy of Plato, and the teachings of Pythagoras which followed, would have puzzled the Arab and the Coptic novices too much to allow of such instruction being general. It may be assumed that, if there is any

truth at all in the statement that such instruction formed the six degree, it must have been confined to a very few.

The seventh degree is very singular ; it teaches the novice a system of metaphysical Dualism which reminds one of Spinoza. Here we have duality instead of unity, which latter is certainly the leading doctrine of Mahomedan theology, so that it may be said a deadly heresy here shows its face. But I say these speculations do not belong to theology at all, but to metaphysics. It is perfectly incredible that subtleties of this kind formed any part of the common religious doctrines of the people. They can only have been the speculations of individuals. The eighth degree develops these philosophical theories. At the ninth, the proselyte knows no religion and no submission to any other authority than his own. My Lord, I repeat, the account of the four first degrees is very likely true; the fifth and sixth must, from their nature, have been confined to a very few ; and it may well be that the seventh was a malicious interpolation to support the stories invented against the Ismailiah as a means of proving them "Zendakians," that is, "Atheists" and libertines. That is the conclusion I have come to as to these seven degrees, as described by *Makrizi* and *Nowari*.

THE JUDGE : But what about the 8th and 9th degrees ?

MR. HOWARD : There is nothing very definite, but I will read what is quoted from our two authorities in *De Sacy's Preliminary Discourse* to the *Religion Des Druzes* (Mr. Howard having read the description of the eighth degree)—

THE JUDGE : That is a further exposition of the theory of dualism ?

MR. HOWARD : Yes ; the ninth is as follows. (This passage was also read.)

THE JUDGE : Why, this relates to natural science ?

MR. HOWARD : Yes, and the end of all this teaching is, not that the disciple becomes an atheist, but that all dogmatic religion is done away with, and he may teach any doctrine he likes best. The ninth degree, then, is "a passage that leads to nothing." This really seems like a joke, and the absurdity and inconsistency of such a system suggests that it was a mere invention of the enemies of the Ismailiah for the purpose of bringing discredit on them.

**THE JUDGE :** No doubt that, may be so but the last degree might result in the teaching of Atheism, you know.

**MR. HOWARD :** Yes, if it is truly described ; but there is always a difficulty in accepting the statements of the outside world upon matters of esoteric religion. In some instances we know for a fact, how preposterous and false they may be. The Jews kept their religion secret from the Romans, and your Lordship will remember the calumnies written of them by Tacitus in the 5th book of his Annals, and the burning language in which the writer condemns their *fæda superstitio* ; *Apud eos* he says, *nil non illicitum*. Such was the verdict of a Roman philosopher, and a historian, respecting a faith so far purer and better than anything that was ever known in the days of heathen Rome. The Christians, with their secret discipline, fared no better with their Pagan critics. I would also again refer to the persecuted Magians whose name was made by the Moslem a synonym for Atheism and Libertinism. Whether there is any foundation for the surmise that the Ismaili Dais taught Parsiism to the adept is not certain ; but in any case the ancient religious system of the Parsis is now known to have been pure and lofty. Dr. Haug (whom I am proud in having been instrumental in bringing to India), the first authority on that subject, speaks of the Zoroastrian theology in the highest terms ; he pleasantly calls himself a "Dastur" or Parsi religious teacher, and he expresses himself on the question of that religion with great enthusiasm. The Parsis have been called the Anglo-Saxons of the East, and no class of people more inclined to lead a blameless and manly life can be named among the Queen's subjects. So that to connect some of the Ismailian doctrines with Parsiism, is not in itself a very damaging imputation.

The Templars of the Middle Ages afford another example of the ease with which false charges are made against secret societies and believed by the world. The Pope's late Bull against the Freemasons of the present day I have before mentioned.

I now come to the ill-omened name by which the Ismailies are chiefly known to Europe—the "Assassins." Gibbon, whose extraordinary tact and power of condensations make his every word important, records, in six lines, the popular report of the wickedness of the Assassins and warns us that it is perhaps exaggerated by historians. Since Gibbon there has been a special History of the Assassins, by

**Baron Von Hammer.** In reading his book we must distinguish very broadly between that part of it which is a compilation from original Mahomedan authorities, and the speculations which he introduces of his own. As regards the first, his book is very valuable, subject to the remark that the materials of the history are obtained from the open and avowed enemies of the Assassins. When we come to *Von Hammer's* own observations, we are unable to value them very highly. He generally condemns the so-called Assassins as self-convicted criminals, and says, that although the things charged against them might, to some extent, be the inventions of their enemies, yet that, on one occasion, the dreadful discovery was made, and they confessed and openly proclaimed and gloried in their atrocities. From the mountain, however, comes forth the very smallest possible mouse. At page 107, of the English translation, he says :—

“Hassan, the son of Mohammed, determined, at whatever cost, to be an expositor, and to favour the impunity of vice, not merely by example, but also to preach from his own mouth the irreprehensibility of crime. In Ramadan, of the 559th year of the Hegira, the inhabitants of the province of Rudbar were collected by his orders at the castle of Alamut. On the place of Mossella (*the place of prayers*, situated at the foot of the castle, like the suburbs of Shiras, celebrated by Hafiz) a pulpit was placed, looking towards Kibla (namely, the country of Mecca), to which the Moslemim turn in praying, and in the four corners four different coloured flags were planted—a white, a red, a yellow, and a green.”

**THE JUDGE:** I think I remember this passage, Mr. Howard ; I think it was one to which Mr. Anstey referred.

**MR. HOWARD:** Yes, my Lord. The passage goes on to state :—

“On the seventeenth of Ramadan, the people were assembled on this place : Hassan ascended the pulpit and commenced by involving his hearers in error and confusion, by dark and puzzling expressions. He made them believe that the envoy of the Imâm (the phantom of a Khalif still tottering on the Egyptian throne) had come to him, and brought an epistle addressed to all Ismailites, by which the fundamental maxims of the sect were renovated and fortified. He declared that, according to this letter, the gates of mercy and grace were open to all who would follow and obey him ; that these were the peculiarly object ; that they should be freed from all obligations of the law,

released from the burthen of all commands and prohibitions; that he had brought them now to the day of the resurrection (namely, the manifestation of the Imâm). Upon this, he began to recite in Arabic the Khutbe, or prayer, which he pretended to have just received from the Imâm. An interpreter, standing at the foot of the pulpit, translated to the audience, in the following words? "Hassan, the son of Mohammed, the son of Busurgonûd, is our Khalif, dai, and hudsot (our successor, missionary, and proof), to whom all who profess our doctrine are to yield obedience in spiritual, as well as temporal, affairs, executing his command and considering his words as inspired, and must not transgress his prohibitions, but observe his behests as our own. Know all that our Lord has mercy on them, and has led them to the most High God." He then descended from the pulpit, caused tables to be covered, and commanded the people to break the fast, and to give themselves up to all kinds of pleasure, to music, and play, as on feast days; "for to-day", said he, "is the day of the resurrection" (namely, the revelation of the Imâm).

From this day, on which crime manifested itself, undisguisedly to the world, the name of Mulahid, or Impious, which hitherto had been given to the disciples of Karmat, and other disturbers of social orders by the lawyers, was now bestowed upon all the Ismailies of Asia in general. The 17th of Ramazan was celebrated with games and banquets; not only as the feast of the revelation, but also as the proper epoch of the publication of their doctrine. As the Moslemin reckoned their time from the flight of the Prophet, so did the Mulahid or Impious, from the revelation of the Imâm (namely, the 17th Ramazan, in the 559th year of the Hegira). And as the name of Mohammed was never mentioned without the addition of the "Blessed," so, henceforth, was added to that of Hassan, the words "Blessed be his memory," which history, instead of blessing, curses.

So here these wretched Ismailies, actually, were so abandoned as to break the fast of Ramazan. Nay, they even drank wine (if they did not eat pork). Of course, nothing could be worse in a Mussalman's eyes, but that a respectable German, writing in Vienna towards the beginning of the nineteenth century, should set these things down against the Ismailies, as the great manifestation of their dreadful crimes is really too absurd, and it makes one strongly inclined to doubt all his moral judgments. He merely echoes Markhoûd, and

in fact he is only to be taken as an authority from a Suni point of view.

**THE JUDGE:** But the facts stated in the passage just read are very strong proofs of an open revolt against Mahommadanism ?

**MR. HOWARD:** Against the ceremonial law. The revolt was like that of Christianity which released people from the legal burdens of Judaism. No doubt, the course taken by Hassan and his followers, of smiting the enemies of their religion with the dagger, is abhorrent to modern European notions, but what I say is, that *Von Hammer* should have exercised more critical judgment and more insight. He should have endeavoured to understand these fanatics, and not contented himself with repeating the injustice of their contemporaries. I will give an example to show his want of liberality, where his prejudices are involved. One of the Assassin princes or chiefs was Jelaleddin, who, after that temporary schism of Hassan bin Mahomed, brought his people back again to the profession of Islam, and was thought a great deal of by his contemporary sovereigns as a devout and respectable potentate. *Von Hammer*, however, passes the following judgment on him (page 54) :—

“ Although no murder stains the history of Jelaleddin’s reign, and so far as his conduct was in full accordance with his system, the historian is, nevertheless, compelled not only to question the purity of his motives, but also the sincerity of his return to the doctrines of Islamism. Two circumstances place this in a very suspicious light. In the first place, the just mentioned refusal to deliver up the murderer who had sought, within the walls of Alamut, the usual sanctuary of impiety, unless in return for the cession of a village ; secondly, in the burning of the books, when Jelaleddin pretended to celebrate an *auto da fe* of the works and rubrics of former grand masters, in order to convince the deputies from Kaswin, of the truth of his conversion. In this, however, it is probable that he consumed the works of the dogmatists and fathers of Islamism, while the great library of free-thinking and immorality, together with the metaphysical and theological works of Hassan Sabah, the founder, were preserved, though secretly, and only, as we shall see below, devoted to the flames on the fall of Alamut and dissolution of the order.

“ It is therefore more than probable that Jelaleddin’s conversion of the Ismailites to Islamism, so loudly proclaimed abroad, and his public

abjuration of the doctrine of impiety was nothing else than hypocrisy and deeply designed policy, in order to re-establish the credit of the order, which had been exposed to the anathemas of priests and the ban of princes by the inconsiderate publication of their doctrines, and to gain for himself the title of prince, instead of the dignity of grand master. Thus the Jesuits, when they were threatened with expulsion by the Parliament, and with a Bull of Excommunication from the Vatican, when, on all sides, the voices of cabinets and countries, rose against the principles of their morals and policy—denied their doctrine of lawful rebellion and regicide, which had been imprudently hinted at, by some of their casuists, and openly condemned the maxims which they, nevertheless, secretly observed as the true rules of the order.

“This assertion of a purer moral system, and genuine Christianity, availed little in re-instating in the possession of their former greatness and power, the once unmasked and exposed order of the Jesuits; and equally small success had the Assassins, in regaining their preceding influence and authority by this system of proselytism, which was preached from every pulpit”

You here see, my Lord, in every line, the expression of prejudice, and the want of critical power. Mohammed repealed the ceremonial law; he was a criminal; Jelaleddin restored it; he was a hypocrite. Whatever the facts, the Assassin Chief must be a villain.

THE JUDGE: There is the expression used there of “grand masters?”

MR. HOWARD: Yes, that is one of *Von Hammer's* crotchets. He wished to connect the Assassins with the Templars and the Egyptians. To show how different a view is taken of these old Mohammadan sects by modern scholars, since the creation of criticism, I will mention that *Sale* following his Suni guides, reserved the severest reprobation for the Motazalites. No words were bad enough for them, but *Wail*, who is probably the first of modern critics in Mahommedan history, regards them as the most respectable thinkers of the Moslem world. They were, he says, the Rationalists of Islam. This may be a warning to us in forming a hasty opinion about the “Assassins.” Now in the first place, this word creates a false impression. They did not know, or use it themselves. They called themselves “Bateni” and “Ismailies.” They were strict Mussulmans, and thought themselves saints



in Islam. Indeed it is absurd to suppose it possible that a nation or tribe should have been suffered by their neighbours, or could possibly have existed as *professed murderers* for a period of 150 years. One thinks of the famous cats of Kilkenny.

THE JUDGE : What is the Etymology of the word "Assassins?"

MR. HOWARD : The word comes from "Haschish." I may mention here that the most valuable thing in *Von Hammer's History* is the interesting paper at the end written by *De Sacy* ; from which it appears that the Ismaili Haschishin, known to the Crusaders, were so called from the use of "haschish," and that the word was corrupted into "Assassins" by the Europeans. We know how innocent words become by religious spite, dyslogistic. The word "miscreant," by origin, only means one who believes amiss, yet to all ears, it now denotes one who is steeped in the last degree of infamy. A "Jew" means a sordid, cheating usurer ; a "Turk" a furious bully. A "Jesuit" a scheming liar. So with these Ismaili employers of hashisch ; they are gibbeted for ever as professional murderers. Your Lordship will probably recollect that in Dumas' novel of *Monte Cristo*, the effect of a dose of hashisch is described. The use the Assassins made of it is not quite certain. One story which is told by *Marco Polo*, the Venetian traveller of the 14th century, is very curious. He says that when the Old Man of the Mountains met with a strong and likely young man whom he thought fit to serve his purpose, he invited him to supper, in the course of which hashich was given him. The guest straightway fell into a swoon. Whilst in that condition he was conveyed into a delightful garden, where on his awaking, he found himself surrounded by beautiful young women and by all kinds of objects that delighted the senses. He was allowed to enter into the enjoyments of the place, and after a while, more haschish was given him, when again he fell into a trance, on recovering from which he found himself sitting at table with the Grand Master, by whom he was told, on recounting what he had witnessed, that it was but an imperfect vision of Paradise which would be the reward of all who became the Shaik's followers. We know the carnal scheme of Mahomed's Paradise, and the promise of dark-eyed houris, whose caresses all good Mussulmans are taught to expect at the moment of death, and probably such a realistic production of those heavenly joys was an admirably contrived device to influence the novice. Another

story is that a dose of haschish was given to any follower of the Shaik who was sent on any errand of danger. We know that on similar occasions the Mahomedans of India resort to bhang. Religious murder has unfortunately been so much the rule of all sects (except perhaps the Hindoos) that to confound even these envoys of the Shaik with common criminals, such as we now-a-days hang for murder, is a fallacy and injustice. In his history of the Assassins *Von Hammer* traces their fortunes under the various Sheiks, until their fortress of Alamut was ultimately destroyed by the Tartar invaders, and from this narrative, imperfect [as it is, one gathers information which is absolutely inconsistent with the notion that they were a tribe of criminals. It is quite clear they formed a tribe or sect who believed themselves to be saints, and that whilst they held Alamut, they only wished to protect themselves from oppression. No doubt in the defence of their religion they exhibited all that zeal which we admire so much in the Jews and the Christians; they gladly suffered martyrdom for their faith, and we cannot consistently deny that readiness to die for their faith is an admirable trait in the character of a people.

The Ismailis of Alamut suffered long and grievous persecution, and they practised assassination as a form of war, meeting the sword with the dagger. They assassinated, indeed, here one and there one, but whenever their enemies got hold of them, they massacred hundreds and thousands. It was in fact a dreadful system of reprisal that was carried on by all parties. *Von Hammer* says the Assassins were denounced as the most terrible enemies of the throne and the altar, and that they were handed over to all men, to be slain as outcasts, and if that was so, can it be said they were not entitled to use desperate means of self-defence? I quote from page 63 of *Von Hammer* :—

“It was a fearful period of murders and reprisals, equally destructive to the declared foes and friends of the new doctrine. The former fell under the daggers of the Assassins; the latter, under the swords of the Princes, who, now roused to the dangers with which Hassan Sabab's sect threatened all thrones, visited its partizans with proclamations and condemnations of death. The first Imams and priates issued, voluntarily, or by order, fetwahs and judgments, in which the Ismailites were condemned and anathematized as the

most dangerous enemies of the throne and the altar, as hardened criminals, and lawless atheists; and which delivered them over to the avenging arm of justice, rather, in open war or as outlaws, as infidels, separatists, and rebels, whom to slay was a law of Islamism. The Imâm Ghasali, one of the first moralists of Islam, and most celebrated Persian teachers of ethics, wrote a treatise, peculiarly directed against the adherents of the esoteric doctrine, entitled, *On the folly of the supporters of the doctrine of Indifference, that is the impious (Mulahid) whom may God condemn*. In that entitled *Pearls of the Fetwas*, a celebrated collection of legal decisions, the sect of the impious (*Mulahid*) of Kuhistan were condemned according to the ancient sentences of the Imams; Ebi Jussuf and Mohammed, pronounced against the Karmathites, and their lives and goods given as free prey to all the Moslemin. In the "*Confluence*" (*Mullakath*) and the "*treasures of the Fetwas*" (*Khasanetol Fetavi*) even the repentance of Mulhad, or the impious, is rejected as entirely invalid and impossible, if they have even exercised the office of Dai or missionary, and their execution commanded as legal, even though they become converts and wish to abjure their errors; because perjury itself was one of the maxims, and no recovery could be expected from libertine atheists. Thus, the minds of both parties were mutually embittered, governments and the order were at open war, and heads fell a rich harvest to the assassin's dagger, and the executioner's sword."

Then my Lord, at the end of *Von Hammer's History of the Assassins*, there is a short statement which at all events connects the Ismailies with the present time. It is this:—

"Remains of the Ismailites still exist, both in Persia and Syria, but merely as one of the many sects and heresies of Islamism, without any claim to power, without the means of obtaining their former importance, of which they seem in fact to have lost all remembrance. The policy of the secret state-subverting doctrine of the first lodge of Ismailites, and the murderous tactics of the Assassins, are equally foreign to them. Their writings are a shapeless mixture of Ismailite and Christian traditions, glossed over, with the ravings of the mystic theology. Their places of abode are, both in Persia and Syria, those of their forefathers, in the mountains of Irak and at the fort of Antilebanon.

"The Persian Ismailites recognize, as their Chief, an Imam whose decent they deduce from Ismail the son of Jafer Essadik, and who resides at Khekh, a village in the district of Kum, under the protection of the Shah. As, according to their doctrine, the Imam is an incarnate emanation of the Deity, the Imam of Khek enjoys to this day, the reputation of miraculous powers, and the Ismailites, some of whom are dispersed as far as India, go in pilgrimage from the banks of the Ganges and the Indies, in order to share his benediction. The castles in the district of Rudbar, in the mountains of Kuhistan, particularly in the vicinity of Alamut, are still inhabited to this day by Ismailites, who, according to a late traveller, go by the general name of Hosseinis."

Now dreadful as was the system of persecution to which the Assassins were subjected, there can be no doubt that their misdeeds have been exaggerated. We have no history of the Ismailis by one of themselves. And should we not have the same sort of distortion of fact, if the story of the Jews was told us by the Philistines. The old Jewish zealots like Ehud or Samuel, who smote their victims in the name of Jehovah are regarded as the servants of God, and we are taught to honour and admire them. It is not surprising if the death-braving envoys of the Ismailis were honoured in the same way, among their own people. Are we to say, then, that the dagger of the followers of Hassan Saba was the dagger of the murderer, when it was directed by the same spirit of religious and national zeal as the sword which exterminated the enemies of the Lord and of Gideon? We have many stories in the Old Testament, in which deeds are recounted with praise similar to those ascribed to the Assassins. There is the story of Jael who smote with a mallet and a nail, Sisera, her invited guest, whilst he slept; and yet she is to this day hailed in stirring poetry as blessed above women! All religious sects hallow bloodshed in the cause of the true faith and record the names of their holy *Sicarii*; but of the acts of the Assassins, we have unfortunately no account, but the reports of those who treated them in the way I have indicated—as enemies of the human race. I will no longer call them Assassins, but I will speak of them by the name which they themselves employed, namely, "Ismailies" and "Batenites."

**THE JUDGE:** Is there not a blank in the history of the people from the time of the destruction of Alamut down to the present period?

MR. HOWARD: There is a very considerable lapse in their modern history. But before coming to that, one of the points to which I intended to call your Lordship's attention, was this; that there are other more agreeable features in their history than their fiery religious zealotry. They were not merely a set of professional murderers, they were the fosterers of science and education. One good work they performed was the foundation of a University at Kairo; the *Dar ol hikmat*. It is said that the khalaa or kaftans worn by the students there, were the origin of the gowns used by the students at Oxford and Cambridge. Von Hammer, absurdly enough, calls the University a "lodge." It was founded by the Fatimite Khalifs, and therein was taught astronomy, mathematics and other branches of learning. Their theology was an allegorising of the Koran. There was therefore among the Ismailies a spirit new for Mohamadans—a desire to educate the people and promote learning. These "accursed people," this nest of murderers, brought forth the most eminent Mohamadan mathematician and man of letters ever known, Nussereddin Toosi. He was most eminent also as a divine, and his treatise upon morals is quoted to this day with great respect. Yet he was an Ismailite.

THE JUDGE: It has been said that he had a great deal to do with the capture and destruction of Baghdad, the reason being that the Khalif had treated his book on astronomy with disrespect, and had even thrown it into the river.

MR. HOWARD: He may not have been a man admirable in all his personal conduct, but as a scholar and a *savant* he was eminent. And here I will repeat that it is most unfair to quote a number of writers avowedly and bitterly hostile to the Shias as trustworthy authorities where the character of their enemies is in question.

It is more to the point to observe that the Chiefs of the Ismaili tribe formed alliances with respectable potentates, their neighbours. For instance, at the beginning of the thirteenth century, Jelaeddin, the Ismaili chief who restored the Islamic ceremonies and burnt the "Bateni" books, married the daughter of the Viceroy of Ghilan. It is a fallacy to impute the crimes of this or that Sheik-el-Jabel to the Ismaili religion, as it would be to hold the Catholic faith responsible for the atrocities of the Borgia. At all events the "Assassins" had nothing to do with the Ismailies of after times, whose peculiarities

re reduced to a 'mysterious Imamism, which alone distinguished them from other Mohamadans.

The account of this people in the *Dabistan* shows what the views of impartial persons were respecting them in the 16th or 17th century. At page 1, of the iii. vol. of the *Dabistan* is the following Editor's note, in which the Ismailies and a cognate sect, the Sadikiah, are mentioned as the objects of calumny :—

"In the before quoted memoir of H. S. Colebrook (*As Res* ; Vol vii. page 342) we read, as taken from the account of Nûrukah of Shuster, what follows : The *Sadiki yahs* are a tribe of the faithful in Hindustan ; pious men and disciples of *Sayyad cabi' ru' ddin*, who derived his descent from *Ismail*, son of Imam Jafr. This tribe is denominatèd *Sadiki' yahs*, by reason of the 'sincere' (Sadik) call of that Sayyad. Although that appellation have (sic.), according to received notions, a seeming relation to Abû Becr, whose partizans give him this title, yet it is probable that the sect assumed that appellation for the sake of concealment. However no advantage ever occurs to them from it : on the contrary, the arrogant inhabitants of *Hind*, who are *Hinduis*, being retainers of the son of impious *Hind* (meaning *Hinda*, the mother of Maviyeh) have discovered their attachment to the sect of Shiàhs, and have revived against them the calumnies which, five hundred years before, they broached against the Ismailahs. They maliciously charge them with impiety. Such is indeed their ancient practice . . . In short, nearly thirty thousand persons of this sect are settled in provinces in Hindustan, such as Multan, Lahore, Delhi, and Gujrat. Most of them subsist by commerce : they pay the fifth part of their gains to the descendants of *Sayyady cabir* who are their priests : and both preceptor and pupil, priest and layman, all are zealous Shiàhs."

THE JUDGE : It appears that down to a certain time we have information as to the Ismailies, and that then there follows a blank ?

MR. HOWARD : I have not been able to find all the links in the chain certainly. I have carefully read through *Chardin*, and from his silence I gather that in their religion the Ismailies in Persia must have become mere dogmatists. But in point of fact their religion has always been kept secret and their teachings would not have been much known, unless they had adopted an aggressive proselytism which they have not done since the fall of Almut. When the Safavi

dynasty was established in Persia, there was nothing for the Ismailies to contend against, for the Shiah form of worship then became the national religion, and suffered no further persecution.

I think I have now shown in reply to Mr. Anstey, that Aga Khan's party are not the enemies of the human race, as they have been said to be, and that they are not disentitled to the protection of the court, whether as Shiahs, Imamics, or Ismailies.

And now, having at some length gone through what 'but for Mr. Anstey's argument would have appeared in some respects rather irrelevant matter, I come to the great question raised in this suit; that is, whether the Khojahs are Sunis or Shiahs?

Now in the suit of 1830, the Plaintiffs did not affirm, or suggest that they were Sunis, but merely disputed the claims of spiritual superiority, set up by Aga Khan.

It was in 1851 that they first announced that the Khojahs were originally converted by a Suni, and that their practices were partly Suni. It is true their practices in India have been partly Suni, but the Plaintiffs did not then venture to say the Khojahs had always been Sunis in faith, neither did they demand what they now ask—  
 ♦ namely that all non-Suni persons shall be turned out of the Khojah community by the decree of this Court. Now when we look at the evidence adduced to prove them Sunis, we find it comes to this; that they rely on the external conformity of the Bombay Khojahs to Sunism in the matter of *nikka* and funeral rites. We fully admit the existence of the Suni forms among the Khojahs, but that admission is coupled with the explanation, that the Khojahs adopted these forms as an outward show, in order to avoid persecution. We rely on a sort of plea in confession and avoidance. Now I take it that if you find a community following the outward observances of one sect, and secretly reading the books of another, the inference is, that they belong to that other. Mr. Anstey replied, first that the reason for Suni non-conformity is manifestly absurd, that the defendants could not have been afraid of persecution in reality, as the British power had been settled in Bombay for 200 years past, and secondly, that the Mohammedan law does not allow of mental reservation in matters of religion, and he even produced official evidence as to the particular department of infernal torture, to which hypocrites were consigned by Mahomed, quoting from *Sale's Koran* on the point. But

the witnesses vouched did not confirm the learned counsel, and I may say in passing that the Persian account of the Mohamedan hell, as given in *Chardin* (Vol. VI., page 251), shows that it is the atheists, not the hypocrites, who are designated by the sacred text.

Your Lordship appreciated correctly the meaning of the explanation, namely, that the practice of outward conformity arose in times when there was serious danger of persecution, and that it continued after the occasion had passed away. But long after the cessation of danger to life and limb, there would still remain the motive for practising mental reservation on account of the social pressure by the dominant Suni sect, which to timid Hindoos, as the Khojahs are by race, would operate as an effective force. That this is no mere fancy we have the evidence of Kureem Khan, who said, that even at the present day the Shiahhs in Bombay go under fear of the fanaticism of the Sunis. I may also refer to what is a matter of notoriety, that the Sunis in Bombay turned out less than 20 years ago, and killed or maimed or beat all the Parsis they could find, simply because in one of their Parsi Guzerati publications, there was a lithographed portrait of Mahomed. And in regard to the rather laboured pleasantry of Mr. Anstey, that the Shia Khojahs must have practised mental reservation because they were afraid of Sir George Clerk, it is sufficient to remember that recent outbreak of the Suni Mahomedans of Bombay in revenge for the fancied slight to their prophet, when, for some days, Bombay was, as it were, in a state of siege, and that so lately the "ancient faith and tenets of Islam" were vindicated according to the ancient and orthodox Suni discipline,—by bloodshed and murder. And here I may add parenthetically, a fact which we shall prove, that before the erection of the old Khojah Musjid in their burial-ground, the Bombay Khojahs had no Mosque at all (the Shias do not attend the Masjid as Sunis do), and it was purely in deference to the reproaches of the Sunis, who stigmatised them as being ignorant and infidels, that they resolved to build a Musjid.

It is hardly necessary, I think, to quote any further authority for the intolerance, even at this day, and in British India, of Suni Mohamadanns—an intolerance faithfully represented in Mr Anstey's Suni speech. They live under a constant and never-forgotten obligation to make war on the infidel; but to them, worse than all infidels are the heretics, the misercants. And that the Khojahs of



Bombay [are not the only Shias who to this day practise outward conformity, under the rod of Suni orthodoxy, appears from the graphic account given by Capt. Burton, in his journey to Mecca and Medina, of the conduct of the devotees at the Holy Cities, as well as from the notice of the Persian Hajees given by *D'Herbelot* under the article of "Buiah." Mr. Anstey, by a leading question, made his witness Goolam Russool say, "Shiahs are not allowed in Roum." Now Shiahs are not actually forbidden to live in Turkey, but they are so much ill-treated and annoyed by the Suni Turks, that they go there as little as possible. To shew the persecution of the Shiah pilgrims in the 17th century, I will read a passage at page 183 of the VII. Vol. of Chardin's Travels. It is as follows :—

"Les Persans trouvent aussi beaucoup de difficultés à leur pèlerinage ; ils les faisoient ordinairement par Bagdad, lorsqu'ils en étoient les maîtres ; la plus ordinaire voie qu'ils prennent présentement, est par Basra, ville au bout du Golfe Persique. On leur fait mille avanies durant le voyage ; les Arabes les rançonnent chaque jour en pécages et autres impositions ; et comme ils passent pour hérétiques chez les Arabes des Arabies Pétrée et déserte, la haine de religion soutenant l'intérêt fait qu'on les écorche encore plus durement. Cela a souvent porté la cour de Perse à défendre d'aller pas Basra à la Mecque, afin qu'on y allât par les Indes, et le peuple même a cessé à diverses fois d'y aller par terre, parce qu'on y périssoit de misère dans le voyage, ou qu'on en revenoit sort maltraité ; mais comme les princes Arabes en souffroient aussi beaucoup de perte ils ne manquent point chaque fois qu'ils voient le chemin de leur pays abandonné d'envoyer des ambassadeurs au roi de Perse, avec de présens, consistant en reliques de la Mecque, et des autres lieux saints de leur religion, comme des pièces de la couverture qu'on met sur les tombeaux de Mahammed et d'Aly, des chapelets faits de la terre de leurs sepulcres, des livres, et d'autres telles babioles de pontife, qui viennent dire de la part de leurs maîtres :—" que Dieu les garde d'empêcher aux fidèles Mahométans l'exécution d'un devoir que leur commun Prophète et Seigneur a si saintement commandé à tous ; qu'ils aimeroient mieux perdre leur pays, que d'y mettre aucun obstacle ; que c'est à leur insu qu'on a exigé des pèlerins plus de droits qu'il ne falloit ; qu'ils en ont fait justice ; qu'ils y mettront bon ordre à l'avenir ; et qu'ils jurent par les esprits des prophètes, et par la tête bénite du roi

(ce sont leurs termes) que les Persans seront traités sur la route avec toute la douceur et affection désirables) j'ai vu quatre ambassades de cette nature en douze ans de résidence que j'ai fait à la cour de Parse et je sais qu'il y en est venu plus de douze ans lésiclé passé, toutes de princes Arabes, qui sont sur le chemin de Basra à la Mecque, auxquelles on accorderoit toujours leurs demandes; mais c'est toujours à recommencer, et les Arabes sont toujours de vrais Arabes. C'est peut-être à ces vexations qu'il faut attribuer les limitations que les Persans apportent au précepte de faire le pèlerinage de la Mecque une fois en sa vie; car au lieu que les Turcs et les petits Tartares, et tous ceux qui tiennent, les mêmes opinions disent que ce précepte oblige tous ceux qui peuvent se soutenir avec un bâton, et qui ont seulement une écuelle de bois vaillant pendue à la ceinture, qu'on va parmi les chafay, une des quatre grandes sectes du Musulmanisme jusqu'à enseigner que chacun est obligé de faire le pèlerinage, n'eût-il pas une sou vaillant; les Persans, au contraire, disent qu'il ne faut pas prendre le précepte à la lettre, mais avec modification, et que les imams, qui sont les premiers successeurs, de Mahammed, ont déclaré que l'obligation du pèlerinage n'est que pour ceux qui sont en parfaite santé, qui ont assez de bien pour payer leurs dettes, pour assurer la dot de leurs femmes, pour donner à leur famille la subsistance d'une année pour laisser de quoi se remettre en métier ou en négoce au retour, et pour emporter après tout cela cinq cents écus en deniers comptans pour les frais du voyage: que si l'on n'a pas ces moyens — la, on n'est point obligé au pèlerinage, et que si on les a, et qu'on n'ait pas la santé requise, il faut faire le pèlerinage par procuration, ce qui se fait on en envoyant un homme en sa place, on en achetant le pèlerinage de quelqu'un qui l'ait fait."

Now, *Burton*, in his *Pilgrimage* (Vol. I., page 95), says, "My choice of doctrine, however, confirmed those around me in their conviction that I was a rank heretic, for the Ajemi, taught by his religion to conceal offensive tenets in lands where the open expression would be dangerous, always represents himself to be a Shafei." The note to this passage states that this is "A systematic concealment of doctrine and profession of popular tenets, technically called by the Shiahs, *Takuyyah*"; the literal meaning of the word is "fear" or "caution." As to the lawfulness of such outward conformity, it is

said that Mahomed forbids mental reservation, but it is difficult to see how even if the statement were ever so correct, it could be shaped into an argument suitable for an English Court of Justice. The question before your Lordship is, I apprehend, whether, in fact, the Khojahs practised mental reservation, not whether, if they did so, they would be open to religious censure. It may, however, be pointed out that the allegation itself is rash and incorrect. It is true the witness Rahimbhoy Hemtaz said: "The Sunis do not allow mental reservation. The Shiabs do. In this respect the Khojahs have always sided against the Shiabs." Moolam Russool also gave similar evidence on the point, but it came out that the outward conformity of the Khojahs was not such as need cause any pain to their consciences, or involving any such position, acts or utterances as a Shiab must object to.

Now as to the teaching of Mahomed on the subject, undoubtedly he forbids Moslems to deny or conceal their faith. But, my Lord, to properly understand the *Koran* we must arrange the Suras in chronological order, in the way *Muir* and *Springer* have done. We then find no doubt that when Mahomed was in the full tide in success, he required his followers to profess the faith openly, but in his early days at Mecca, when his disciples were few, and the scoffers many, and the idolators oppressive, he directed reserve in the most distinct terms. In the 1st Vol. of *Muir's Life of Mahomet*, page 74 of the introduction, there is the following passage:—"The first" (the using of mental reservation to save one's life) "is borne out by Mahomet's express sanction. Ammâr ibn Yâsir was sorely persecuted by the pagans of Mecca, and denied the faith for his deliverance. The prophet approved of his conduct:—"If they do this again, then repeat the same recantation to them again" *Kâtib al Wackidi*, p. 227½. Another tradition preserved in the family of Yâsir is as follows: "The idolators seized Ammâr, and they let him go not until he had abused Mahomet, and spoken well of their gods. He then repaired to the prophet, who asked of him what had happened." "Evil, oh Prophet of the Lord! I was not let go until I had abused thee, and spoken well of their gods."—"But how," replied Mahomet, "dost thou find thine own heart?" "Secure and steadfast in the faith." "Then," said Mahomet, "if they repeat the same, do thou too repeat the same"—*Ibid*. Mahomet also said that *An. mûr's* lie was

better than Abu Jahl's *truth*. The second "(mental reservation to effect peace)" is directly sanctioned by the following tradition:—"That person is not a liar who makes peace between two people and speaks good words to do away their quarrel *although they should be lies* *Mishcut* vol. 2, page 427. As to the *third*, we have a melancholy instance, that Mahomet did not think it wrong to make false promises to his wives, in the matter of Mary his Egyptian maid. As regarding the *fourth* it was his *constant* habit in projecting expeditions (excepting only that to Tabûk) to conceal his intentions and to give out that he was about to proceed in another direction from the true one. *Hishâmî* p. 392, *Kâtâb al Wâkidi* p. 133 $\frac{1}{2}$ ."

I say that the outward conformity of the Shiahs, was not such as to cause shame or pain to an ordinary person. It would be very much like the case of a Church of England man worshipping among Unitarians. Some of his cherished forms would be absent from the service, but there need be nothing positively offensive to him, nothing that he could not join in, though he might think the Unitarian office meagre and imperfect. The only difference between the Sunis and Shiahs in their prayers, pointed out by Rahimbhoy Hemraj is in the "Kulma," yet the Shiahs do nothing but add a few words to the formula used by the others. The Suni Kulma has the words *La illah-il-allah Mahomed russool-illa*. The Shiahs add, *Allian vullee-oolla russee russool-illa*; and at the "Khootba," the Suni Moola names the four Khalifs. The Moollah who was examined said the only difference he could see in the Shia worship was that the Shiahs prayed with their hands open. It is admitted that a Suni could not use the Shia forms without apostacy; he would have to utter what his sect consider positively untrue, and in the last degree heterodox, namely, that Ali is the successor of Mahomed. The Shiahs do not cherish the intolerance of the Sunis or consider that the Almighty will reject prayers that are not offered up with the proper twist of the elbow. They are not so superstitious as the Sunis, and they do not think that praying in another than the prescribed attitude makes their prayers the less acceptable.

The Shiahs add a few words to the Suni formula, but there is nothing in the formula itself to which Shias take objection. It is quite true that in the Suni "Azan," or "Bhang" which is the Indian term for the summons to prayers, persons are mentioned as the successors of the

Prophet who would be offensive to the Shias and whom they regard as usurpers.

The Sunis are not allowed to use mental reservation, and therefore, no Suni can follow Shia practices as an outward form.

It is possible for the Shias to follow the exercises of the Suni faith, but not for the Sunis to worship according to the Shiah rite.

The questions then is thus raised as an issue of fact : "Is it, or is it not the truth, that the Khojahs though outwardly practising certain Suni religious forms, inwardly hold non-Suni opinions?"

It is remarkable how the Plaintiffs' counsel have shrunk from adducing that kind of evidence which alone could do them any service on this issue, whilst they called all the Suni Moolas that have officiated in the Khoja Musjid, and elicited, with unnecessary diligence the fact distinctly admitted in the answers—that the Khojahs have been in the habit of performing funerals and marriage through Suni Moolas, and therefore, of course, in Suni fashion. And what evidence do they bring forward in the matter? Why they put forward the Suni Moolas who have conducted these nikka and funeral services for them, and all of whom on being questioned say ; " Oh, yes, the Khojahs have always been Sunis," but my learned friends did not dare to ask a single question as to the private opinions or the religious books of the community. That was left for us to do, and your Lordship must have been struck by the result of our cross-examination, for it then came out distinctly, that the Moollas had no other reason than the fact of the existence of these external conformities for inferring the Suni opinions of the Khojahs, and further, a most significant piece of evidence—that the Khojahs have always *kept their Suni Moollas at arm's length*. The Moollas were not themselves Khojahs, they would not, they said, intermarry with Khojas, they knew nothing of the Khoja religious books, and in particular they knew nothing of the *Dasavtar*, which as I shall show has always been the peculiar and characteristic sacred book of this community. These Moolas knew nothing about the private life of the Khojahs or what their private religious practices were. They only said, "these Khojahs are Sunis, because they practice the Suni form of worship." There were indeed three Khojahs, who said generally, that the Khojahs were Sunis, but these all belonged to the anti-Aga party, and their evidence when analysed, goes for little or nothing ; Mohamed Dama said,

"I am a Shia—no a Suni; I was twice married in the Suni form, that is why I know." But your Lordship must have observed what a very different kind of evidence was given by one of the Khojahs, the most respectable of his party, Mr. Ahmed Hubbibhoy, who up to this time has paid all the expenses of this suit. He is a young man of little more than thirty years, and the son of the old enemy of the Aga in 1829, has always been brought up, like a Hannibal, as the chief of the opposition. The other two Khojas earned your Lordship's reprobation for the way in which they gave their evidence, but this much was wrung from them very reluctantly, that the Khojas had religious books in use amongst them, about which the Moolas knew nothing, and which were quite alien to Sunyism.

The use of these books and the performance of Shia practices among the Khojahs have been kept secret from the Moolas. And it is from this clear, that the great body of the Khojah Suni practices were merely followed by way of external conformity, and that apart from the outward observance, they had a private and very different religious system of their own. It also appears that the Khojas do not perform the pilgrimage to Mecca, which all Sunis consider a duty of obligation; it is indeed recognized as one of the five great duties of the Sunis, but not of the Shias. This agrees with what *Chardin* says on the subject; and none of the Khojas whom I put through their catechism, were able to enumerate correctly what those five duties of orthodox Suni Mahomedans are. Now those duties are, prayer, ablution, fasting, almsgiving, and pilgrimage. But though the Khojahs do not make the Haj to Mecca, it was admitted that many of them go to Kerbela, where is the tomb of Hoosain, the darling saint of the Shias. Without entering into detail, I think I may say that your Lordships must be of opinion, that on the evidence adduced by the plaintiffs, they have wholly failed to show, that the Khojas are strict Sunis, or that they are even Sunis at all, (certain outward observances being explained). That they have dishonestly attempted to hide their secret books, and the doctrines, from the Court, and that their practices with regard to Aga Khan and the visiting of Kerbela are suspiciously like the characteristics of Shias. Especially is this so with reference to their observance of the Mohurram festival, the inscription on their Musjid, their reverence for Aga Khan, and their customs in the matter of

inheritance. We go further than all this however, we do not content ourselves with breaking down the plaintiffs case, we shall make out the contrary of it.

Now first as to the proof adduced by the Plaintiffs that the Khojas are by origin Sunis. The plaintiffs' party did not say thus in 1830, or in 1851, what they said was, that the Khojas were originally converted by a Suni, but they did not dare then, as they now do, to say that the Khojas were always Sunis ; and they did not then pray as they now do, that Shia Khojas should be excluded from the caste. The witnesses that were called to prove this part of the plaintiffs' case, fell back, when pressed, on the existence of outward Suni conformity among the Khojas which we have never denied. But what reliance can be placed on the testimony of men who were evidently brought here for the purpose of misleading the Court? I have a right to say so when witnesses who profess to serve the interests of morality and a purer faith, have without question concealed evidence which they might have given, and which they knew to be material, and have put before the Court, a case which they must have known to be false. It is extremely important to observe the inference derived from the fact disclosed by the evidence, namely, that the Suni Moollasknew nothing about the Khoja's secret books ; and that none of the Moollas were themselves Khojas. All this shows that the Khojas have systematically kept things secret ; that their conformity was only external and that apart from the outward Suni observances they had a separate secret system of their own. It is quite true that the plaintiffs' witnesses said generally the Khojas were always Sunis, but when they were pressed in cross-examination the statement came to nothing. I have already mentioned one of the witnesses who on being asked what he was, replied " I am a Shia and then correcting himself, said " No a Suni." That illustrates very well the general character of the plaintiffs' evidence, and your Lordship will recollect the case of one witness who admitted that he was a Shia and adhered to Aga Khan, but afterwards altered that statement and said he was not really a Shia but that he wanted to get something out of Aga Khan. Now what kind of reliance can be placed on the evidence of such witnesses? Then your Lordship recollects the statement made by Khan Mahomed Dathoobhoy about his brother, Noor Mahomed Dathoobhoy

The brother in the former suit stated that the Khojas were Shias, and the attempt made to explain that statement away by Khan Mahomed Dathoobhoy was about as disgraceful a piece of shuffling as I ever knew of in a Court of Justice ; yet in cross-examination by the Advocate-General, he admitted that a man might practice mental reservation on some occasions perhaps.

My Lord, I say we shall connect the Khojahs beyond a shadow of doubt, with books, and formularies, and practices and facts which are absolutely inconsistent with the Sunyism which their learned counsel has tried to fix upon them. We do what the other side dare not do, we go back to the times prior to the disputes in the Khojah community. And first as to the meaning of the name " Khoja ; " Mr Anstey correctly stated it to be " an eminent person, " " one distinguished " (in particular for piety). The word is Persian as we find from *Richardson's* dictionary, and we can quite understand that the title may have been given to the tribe on their conversion to Mahomedanism, by a Persian Missionary. The title " Khojah " was assumed by the Sarbedarian dynasty in Khorassan from whom the Sufis of Persia descended. The last was a fanatic Aliite who kept a horse always saddled, ready for the Mehdi, as shown in *D' Herbelot's Bible : Orientale* article *Sarbedar*, which states:—

" Sarbedar et Sarbedarioun. Nome d'une Dynastie de douze princes, qui ont régné dans la ville de Sebzaren Khorassan et dans plusieurs autres qu' ils conquièrent pendant l'espace seulement de trente cinq années.

L'origine de ce nom qui est Persien, vient de ce que le premier de cette famille ou Dynastie, avoit ramassé plusieurs gens sans aveu, qui excitèrent une grande sédition contre le Gouverneur de cette province, et attachèrent pour signal de leur révolte, plusieurs bonnets ou turbans aux fourches publiques, ce qui est exprimé par le mot Persien composé Serbedar, qui signifie des testes sur la potence. Le premier qui s'empara du commandement parmi ces seditieux et qui prit la qualité de Prince ou d'Emir, se nommoit Abdalrazzack Ben Fadh-lallah Al Baschtini, natif de Sebzvar, lequel commença à faire bruit l'an de l'hégire 737, aussi-tôt après la mort d'Abou Saïd Ben Algiap-ton, Sultan ou Empereur des Mogols et Tartares. Car ce fut justement après le décès de ce prince, que le grand Empire ou dynastie des Ginghiz Khaniens, commença à tomber par la division des princes



de cette maison, abou Sâïd n'ayant point laissé d'enfans pour luy succeder.

Abdalrazzak ne regna que sept mois, sous le simple titre d'Emir.

Le second prince des Sarbadariens, fut Khouageh ou Cogiah Vagiheddin Massoud, qui regna six ans, quatre mois.

Le troisième, Agah Mohammed Timur, que n'étoit point de la race d'Abdalrazzak Al Baschtini regna deux ans et deux mois.

Le quatrième, Ghelou Asfendiar, un an et un mois,

Le cinquième, Khogiah Schamseddin Afdhal, fils de Fadhlallah Al Baschtini, premier prince de cette dynastie et frere de Vagiheddin, qui en fut la second regna sept mois et laissa le commandement a son Neveu.

Le sixième, Khouageh A'li Schams eddin, regna quatre ans et neuf mois,

Le Septième, Emir Khogiah Iahia Ben Haidar Al Kerabi, quatre ans huit mois.

Le huitième, Khogiah Zeineddin Thahe Ben Haidar Al Kerabi regna un an.

Le neuvième, Pahalavan Haidar Cassab, le Boucher, un an et un mois,

Le Dixième, Khogiah Lutfullah Ben Vagiheddin Mussoud, regna un an et trois mois.

L'ouzième, Pahalavan Hassan Al Damgani, quatre ans et quatre mois.

Le douzième, Khogiah Abi Mouiad. Ce dernier prince des Sarbadariens s'attacha à Tamerlan l'an 782 de l'Hegire, lorsque ce conquérant entra victorieux dans la province de Khorrasan et il demeura toujours auprès de sa personne jusques en l'an 788 qu'il mourut.

Ce Khogiah Ali Mouiad fut sort estimé pendant sa vie et acquit beaucoup de credit auprès de Tamerlan, qui se servoit souvent de ses conseils Il portoit grand respect aux docteurs de sa loy et particulièrement a ceux qui estoient de la race de Mahomet et d'Ali, en quoy il étoit si superstitieux, l'on dit qu'il tenoit tout les soirs et tous les matins, un cheval tout prêt a monter pour aller au devant du Mahidi le douzième Imâm de cette race."

"Khoja" was also the title of the Isamili envoy murdered in A. D. 1127. Chardin, at page 200, Vol. VI., says: " Le plus célèbre des

auteurs des derniers siècles et le plus suivi est Coje Nessir de Thus, tres-fameux et très-estimé parmi les savans de l'Asie, qui vivoit il y a environ quatre cent cinquante ans" &c.,

It is extremely curious that the word Khoja occurs in the *Dabistan*—which was so extensively quoted from by Mr. Anstey—only once and that there it is used as a proper name, and connected with the Ismaili sect. The word Khojah at page 417, vol 2, is said to signify, " Lord, professor, man of distinctions " and also a eunuch. Khojah is the title commonly prefixed to *Nassir Eddin* " the defender of the faith," which is the surname of Muhamed ben Hassan or Ben Muhamed al Tusi whom I mentioned before. He was born in Tus in the year of the Hejira 597 (A. D. 1220). He is acknowledged to have been the Doctor who acquired among Mussulmans the highest reputation in all sorts of sciences ; he was a commentator of *Euclid* and of the spherics of Theodosius and Menelaus. He left scientific works, duly admired, and was an astronomer, lawyer, theologian and statesman " He was also eminent as the historian of the Ismaili Khalifs.

The Khojahs were correctly stated by Mr. Anstey to have been first settled in Kutch. This is their own tradition, and it is confirmed by their old books which are written in the Sindhi characters and in a mixed language of Kutchi and Gujerati. From Kutch, came the fathers of the present Bombay Khojas, and it is important to observe that there are still other Khoja communities in Cutch, Gujerat, Sind and elsewhere. Towards the end of the last century there were Khojas in Bombay, and early in the present century they formed a community, and used to send contributions to the Pir. The Plaintiffs have carefully abstained from referring to these communities, and their religious opinions, we, on the other hand, shall be as anxious to call attention to them. The Bombay Khojas, I repeat, are only one among many Khoja communities ; and it was probably the stimulus afforded by the spectacle of European Government, in this island, which inspired some of the Bombay Khojas with the spirit of resistance to their Pir in 1829-30.

In the celebrated Khojah female case, where the issue was simply as to the law of inheritance applicable to Khojas, the general effect of the evidence, as to the history of the Bombay Khojas, is thus summarised by Sir Erskine Perry, who had not however so many facts before him, as your Lordship will have. " However this may be,

the Khojahs are now settled principally amongst Hindu communities such as Cutch, Kattiawar, and Bombay, which latter place probably, is their head-quarters. They constitute at this place, apparently about two thousand souls, and their occupations, for the most part, are confined to the more subordinate departments of trade. Indeed the caste never seems to have emerged from the obscurity which attends their present history, and the almost total ignorance of letters, of the principles of their religion, and of their own *status*, which they now evince, is probably the same as has always existed among them since they first embraced the precepts of Mahomed. Although they call themselves Mussulmans, they evidently know but little of their Prophet and of the Koran ; and their chief reverence at the present time is reserved for Aga Khan, a Persian nobleman well known in contemporaneous Indian history, and whom they believe to be a *descendant of the Pir* who converted them to Islam. ”

The footnote to this passage states :—

“ This is a mistake, I think ; from an instructive note I have seen by Lt -Col. Rawlinson, it appears that Agha Khan is a lineal descendant of the sixth Imâm, and that a large section of Mussulmans believe this sixth Imâm is again to appear on the earth. It is probable that the Pir, who converted these Khojas, belonged to this Imamy sect of Persia and hence the reverence for Aga Khan which is shown by numbers in Persia, and which induced the late king to bestow on him his daughter in marriage. The peculiar doctrine of the Ismailies, as this section of Mahomedans is called in Persia, is that they believe each successive Imâm from Ali to Ismail was an incarnation of the Divine Essence, and further that the incarnation is hereditary in the direct male line ; hence Aga Khan is worshipped as a God by all true Ismailies. ” ( “ *Col. Rawlinson's Rep. to Gov. of India.* ” )

The last statement, my Lord, is not correct in the strict sense of the word ; there is no worship, strictly speaking, the Aga's followers only kissing his hand. So far as the evidence in that case goes, it is quite inconsistent with the devout and scrupulous Sunyism now attributed to the Khojas. It appeared in that suit that the Khojas opposed to Aga Khan then *intended to join* the general body of the Mussulmans in Bombay, a most significant fact, as showing that they were not Sunis then ; and your Lordship will further recollect that

of the two opposing parties in the female succession case, the one which wished to apply the Mohamedan law in regard to the inheritance of Khoja women, was the Aga's party, and not the other. It is undoubted that the Aga wished to apply the Mohamedan law which gives a right of succession to women, and that he desired to make the Khojas more just and liberal towards their females. It is one of the great glories of the religion of Mohamet that he did so much to raise the position of women among the idolators of the ancient world, and yet these people, the Plaintiffs, have the impudence to avow their wish to get rid of this obligation, and stick to the old Hindoo system, at the same time claim to be orthodox Sunis.

The Khojahs in that suit were proved to have called themselves Sunis to the Sunis, and Shias to the Shias; now the Sunis cannot practice that reservation, but the Shias may, and it is remarkable that this is specially true of the Ismailis. *De Saucy* in his Preliminary Discourse to the *History of the Religion of the Druzes* says, the Ismaili Dais represented themselves as Shias to the Shias and Sunis to the Sunis. Sir Erskine Perry in his *Oriental Cases* (page 113 and 114) speaks thus of the religion of the Khojas:—

“But even to the blood of their saint they adhere by a frail tenure, for it was proved, that when the grandmother of Agha Khan made her appearance in Bombay some years ago, and claimed tithes from the faithful, they repudiated their allegiance, commenced litigation in this Court and professed to the Kazi of Bombay their intention to incorporate themselves with the general body of Mussulman in the Island. To use the words of one of themselves, they call themselves Shias to a Shia, and Sunniys to a Sunniy, and they probably neither know nor care anything as to the distinctive doctrines of either of these great divisions of the Mussulman world. They have, moreover, no translation of the Koran into their vernacular language, or into Guzerati, their language of business, which is remarkable when we recollect the long succession of pious Mussulman kings who reigned in Guzerat and in the countries in which the Kojahs have been located. Nor have they any scholars or men of learning among them, and not a Kojah could be quoted who was acquainted with Arabic or Persian, the two great languages of Mohamadan literature and theology, and the only religious work of which we heard as being current amongst them was one called the *Das Avatar* in the Sindhi character and Cutchi language.”

Now the name of the book here mentioned, is formed of two words *Das Avtar* (ten avatars or incarnations) and it is quite impossible (as I have before shown) that the *Desatir* put forward by Mr. Anstey can be the same. In the *Das Avtar*, the Tenth and most sacred chapter is the incarnation of God in the person of Ali—a horrible blasphemy to the Sunis, and which proves that the book is Shiite. This fact alone, is fatal to the case of the plaintiffs. And I say broadly, that so far as the general result of the evidence laid before Sir Erskine Perry goes, the history of the Khojas was and is quite inconsistent with their being Sunis.

I get a glimpse of the Khojas in Kutch in 1818, from a notice by Captain James Macmurdo, the Resident at Anjar, at page 232 of the second volume of the *Bombay Literary Transactions*. In that memoir, the author ranks the Khojas among Mohamadans, and says they considered themselves of Persian origin and venerated a living Pir in Persia. This of itself, shows the gross falsehood of the suggestion in the bill, that Aga Khan set himself up as a Pir of the Khojas, for the first time, in 1831. The evidence of Captain Macmurdo is very important, for he was on the spot. He says :

“The Khoja is a Mohamadan cultivator The Khojas consider themselves of Persian origin, and frequently make a pilgrimage to a spot eight days march to the north west of the Ispahan, were they worship a living *Peer or saint* to whom they pay an annual tax on their property.”

THE JUDGE : The Pir referred to here, would be the Father of Aga Khan ?

MR. HOWARD : The paper was read just about the time of the death of the Aga's father.

There is again a negative piece of evidence supplied by the census of the Bombay Mohamadans, for 1807-1808, and which is given in the 1st volume of the *Transactions of the Bombay Literary Society*. It is appended to the Preliminary Discourse by Sir J. Mackintosh. The table was prepared for him by the Cazi of Bombay, Shaboodeen Mohuree, of course a strict Sunni. It is a curiously immethodical classification. Under the first head, come, “Kokunee and Mahratta Mussulmans” who are set down at 13,502. Then comes the very small class of Mussulman water carriers, 129 : next there are “Butchers who kill goats only (from the ghats),” 321. Then we

have the number of Mussulmans in Colaba and Mahim, and next come "men connected with establishments of prostitution, 200"; then "prostitutes and females connected" with prostitution, 1,200; and lastly, "Memun Mussulmans," 3,659. The total of the Mussulman population of Bombay in the beginning of 1808 thus set forth amounted to 20,284, of whom 9,960 were males, and 10,324 females. Now your Lordship will observe the significance of the fact that the Memuns, who are Sunnis, are placed in this list, but after the water-carriers and those degraded creatures whose profession is connected with prostitution. The Memuns are Hindoos who were some centuries since converted to Mohamedanism. They being Sunnis, are admitted into the list of Moslems. The Borahs, who like the Memuns, are Mohamedanized Hindoos, are not admitted into the list, obviously because they are not Sunnis but Shias, and I say the inference is plain that if when this census was made there were any Khojas on the island—as we know in fact there were—they were not considered by the Cazez to be Mohamedans at all, or any more than were the Borahs. That there were then Khojas on the island is quite clear from the fact that there is an entry in the books of the Bombay Khoja Jamat (relating to the Pir) under date of 1806-1807.

As the Cazi did not consider the Bombay Khojas to be Mussulmans at all I need not repeat that they could not have been Sunnis. This circumstance connects itself strongly with the statement of Sir Erskine Perry in his judgement in the Khoja female case, that in 1830, the Bombay Khojahs went to the Kazi and applied to be admitted among the Mohamedans of the island. If they had been Sunnis that of course could not have occurred.

As to the Khojah Musjid, which I admit was consecrated by the Cazez, I shall give evidence relating to the circumstance under which it was built by the Khojas in 1822 or 1823, and I shall be able to show, by the testimony of old persons, that before it was built, the Khojas had no common place of worship. They were reproached by the orthodox Mohamedans on that account as ignorant, irreligious persons, and they then built a Musjid in deference to the prevailing sentiment and invited the Cazi to open it, but that did not make them, nor was it understood to make them, Sunnis. We brought it out on cross-examination, that in the inscription at the door of the Musjid which includes the Alite "Pun-j-tan," there is no mention of

the four Khalifs, the badge of Sunyism. I do not rely on that fact as in itself conclusive of the Shiism of the Khojas, but it certainly does strengthen our case ; for it shows that Ali, Fatma and their two sons, are regarded with special reverence and love by the Khojas, while no honour is paid to the personages who are invariably named after God and Mahomet, in the Suni inscriptions. No doubt the Punjtun is in some sense, as Mr. Anstey remarked, acknowledged by Suni and Shia, but specially by the latter, and Musjids over which it is inscribed, are presumably Shia. In the same way although the blessed Virgin is venerated by Protestant and Roman Catholics alike, yet if we were to see her name appearing over the door of a church there would be a strong inference that it was a Roman Catholic place of worship. And the Court will remember that when I asked one of the witnesses, whether he would not regard the Musjid as a Shia place of worship from the fact of the Punjtun being inscribed on it, he candidly replied, Yes ; and that it certainly would be an exception to find such inscription in a Suni Musjid.

I now come to the important evidence afforded by the Khoja sacred books The *Dasrater* is mentioned under the barbarous spelling "Dussowtar" in the Bill of 1850 : It is referred to also in that of 1862, the present Bill, as follows :—

"They" (the Khojas) "never had any learned men among them and had never any knowledge of the Koran, but had esteemed a book called the Dussowtar, which was invariably read over to Khojas who were on the point of death."

The Plaintiffs' counsel were manifestly embarrassed when a copy of the "Dasavtar" was put into the hand of one of their witnesses ; but, it is impossible for them to get out of the statement made in their own bill, that it is the Tenth Chapter of this book which is by the ancient custom of the tribe, read over dying Khojas. That fact alone, as will appear, demolishes the case of the Plaintiffs. The "Dasavatar" is also mentioned by Sir Erskine Perry, in his Judgement in the Khoja female case.

It is admitted by the reluctant witness Allaruckia Coorjee, to be an ancient book of the Khojas ; and it professes to be the work of Pir Sudrodeen, the apostle of the Khojas. It is most instructive to remark, that the anti-Aga party have now for the first time attempted to repudiate the book. Their counsel, Mr. Anstey, who

drew the bill of 1862, doubtless never saw the "Dasavtar;" and he knew nothing about its nature until I cross-examined his witnesses on the point. In his speech the learned counsel, made what I am bound to consider the extraordinary blunder (one that could never have been suggested to him by his clients) of suggesting that the book used by the Khojas and called "Dussowtar" in the Bill (which is nothing but an unscholarly way of writing "Dasavtar," was the "Desatur," a curious history of the pre-Zoroastrian Persians, a book which I shall have occasion to speak of presently, but which has no more to do with the *Dasavtar* of the Khojas, than *Homer's Iliad*. If it was not an extraordinary blunder it was an attempt to withdraw the Court's attention from a document which alone is fatal to the case of his clients. I was really amazed when I heard one of my learned friends suggest that the statement in the bill relative to the use of the "Dasavtar" among the Khojahs was admitted through a clerical error!

The "Dasavtar" is a book in the peculiar Khoja dialect and character professing to be written by Suddroodeen, containing the nine incarnations of Vishnu as believed by the Hindus and adding a tenth chapter, wherein God is said to have become incarnate in Ali. Such a book, as the plaintiffs' witnesses told us, could not possibly be used by a Suni. Mr. Anstey, our great Suni doctor and authority, loudly denounced the blasphemy of the doctrine of Ali's incarnation. His witnesses called it a Hindoo book, but it is only Hindoo as the Bible is Jewish. It is composite—leading from Hindooism to Mohamadanism. The internal evidence is absolutely irresistible, it is impossible to admit the theory of a forgery; nor indeed is such a theory suggested on behalf of the plaintiffs. The plaintiffs have discovered since the filing of the bill of 1862, that they must repudiate it, or give up all title to be considered Sunis. It is in fact, *precisely such a book as an Ismaili Dai would write to his Hindoo converts*. The author must have been a Shia, for the divine honours rendered to Ali, are a badge of the most exalted Shiasm. It also agrees with the peculiar character of Ismaili proselytism. *De Sacy's* Mahomedan authorities say that the Ismaili Dais were to attack every novice upon his own ground whether as Magian, Jew, Christian, or Suni or Shia.

The JUDGE: Your proposition is, that such a work as this Khoja



book never could have been composed by a Suni, although it might have been written by a Shia ?

MR. HOWARD: Yes, my Lord, and I go further. I say it bears strong marks of having been written by an Ismaili Dai for the use of Hindoo converts, agreeing as it does precisely with the mode of teaching by the Dais described in *De Sacy*. No one pretends to tell us how old the "Dussavtar" of the Khojas is, but it is admitted to be an old book, and (until this hearing) that it was always the sacred book of the caste. And I say it is perfectly impossible to get rid of the evidence which it affords as to the prevailing religious ideas of the Khojas. You will recollect that all the Moolas said that a book which contained the incarnation of Ali would be horribly blasphemous. It seems to me impossible for the plaintiffs to remove the inference, that the Khojas who always used the book could not be Sunis.

Then there is the *Sokrea or Hundred Ceremonies*, a book in other respects colourless, but which gives Ali the title of *Moula*, that is, "master." It is clear this must be an Alite book, although the attempt was made by the plaintiffs' counsel to put it forward as a *safe* Khoja document. The Suni Moolla, Russool, said he had never heard of it. Then there are the collections called *Ginans* from the Sankrit word *gyan* meaning "knowledge" just the sort of name that a tribe of Hindoos would give to a religious book upon the occasion of their conversion to Mohamedanism, i. e., as they would consider it, the obtaining of better knowledge. A still more special document is the *Duwa*, an old Khoja prayer used in the Jamat Khana, and which contains the genealogy of Murtaza Ali and thence down to Aga Khan which is a roll of fifty names. We can understand by our own experience in the matter of religious catechisms, that every one would not take the trouble to learn and retain by rote, this lengthy pedigree, but I have heard some of the Khojas repeat the whole of the names with great ease and fluency. The prayer from its very nature is such as would be used only by Alites of the most distinct character. This *Moula ka Kulm* (one of the Ginans) or "Word of the Master" (Ali) must be taken to be a genuine Khoja book from the evidence we have heard. It was printed some years ago by Allarukia Coorjee, the witness who said the Khojas were Sunis, and yet there is a passage in it to this effect:—

"Know that God is one. After the prophet, know that Ali comes next; Moula Ali is in place of the prophet."

THE JUDGE : Well that is manifestly Shia.

MR. HOWARD : Yes ; in this collection of *Ginans* there are passages which would be considered highly blasphemous by Sunis. Ali is glorified in an extreme manner, and there is one crucial phrase of which I will find the reference ; “the false Suni dogs do weep.” All these circumstances of their sacred books point in an unmistakable manner to the Imamic and Aliite tendencies of the Khojas, and disclose tenets and practices which would be looked upon as deeply improper by the Sunis. This, the plaintiffs and their witnesses are well aware of. To recur for one moment to the Punjtun inscribed in the Khoja Musjd. Your Lordship will recollect that when the Moola Russool was asked whether he had not observed the inscription, he answered evasively, yes he had and that it contained the name of God and “some other person.” The witness evidently was aware that it would damage his case to admit that the other persons were Ali, Fatma, Hussan and Hoosain.

The JUDGE : You put it that the books you refer to, have long been in use in the caste, and that they were not written by Sunis ?

MR. HOWARD : Yes, my Lord, and I attribute genuine historical value to the evidence afforded by these books, for it is clear that at any rate they were not written by any person now alive.

The Judge : If you can prove that this prayer, containing the genealogy of Aga Khan down to Ali, has been long used among the Khojas, that will be a very important piece of evidence.

MR. HOWARD : We shall produce such evidence and I believe it will be conclusive. I have now shown by evidence that could not be tampered with, that the Khojas were, before the commencement of these caste quarrels, a non-Suni sect ; and I should now proceed to another branch of the subject, namely, their connection with their Pir, which will complete my argument. In the first place your Lordship will remember that some importance was attached by my learned friends to the statement, made by one of their witnesses that “the Shias have no Saints ;” but I will dispose of that statement in a very speedy manner by a reference to the VIII. Vol. of *Chand-ing's Travels* in Persia, where a score of Shia saints are mentioned at page 418.

THE JUDGE : You need not trouble yourself on that point ; I do not think it is necessary to go into it, the Shias no doubt have

saints, but it is very important to show what the relations have been between the Khojas and the Aga.

MR. HOWARD : It is not disputed that Aga Khan is the living representative of a Syud family established in Persia. He traces his descent of forty-six generations, through the later chiefs of Alamut, through the Fatimite Khalifs of Egypt, to Ismail the son of Jaffier Sadik the sixth Imam, and so back to Ali, the cousin and son-in-law of the Apostle of God. That is indeed a splendid, pedigree, but one which I am not going to prove ; it is quite sufficient for me that it is taken to be true in the main by the other side, who admit the Aga to be a Syud, that is a descendant of Ali. The late Shah of Persia must have considered the pedigree true, or he would not have given his daughter and a government to the Aga when he was a youth. In the genealogy, the 20th and 21st names are those of Sha Nizar and Sha Islam Sha, who are mentioned in the sacred books of the Khojas. In the Bill of 1830 the Aga was named Pirzada, that is "the son of a saint." He is an hereditary Imam by a long descent,—not a recent pretender, and it was a gratuitous insult to him, for my learned friends to describe him as an impostor or a false prophet. This court cannot properly form or express an opinion as to whether the belief of his followers in his pretensions is just or not ; it exists, and that is sufficient. Aga Khan holds his position in virtue of a sort of apostolic succession. He is a spiritual chief but he does not pretend to work miracles, and he is not worshipped. The passage read by Mr. Scoble from a recently published work, *Watson's History of Persia*, correctly relates the story of Aga Khan's father's murder ; but it is told with somewhat more detail in the *Nasi Khut Tawarikh*, where the Aga's father and grandfather are mentioned as Imams of the Ismaili sect. This work is a printed book in Persian and the passage I refer to is in the second chapter of the 1st Volume. (Passage read.)

Now this extract shows that Aga Khan's father was an hereditary Imam of the Ismaili sect with the assent and respectful recognition of Futteh Ali Shah, the Zendia Shah of Persia, who came to the throne in A. H. 1212.

THE JUDGE : The Zendiahs held out against the authority, of the present Persian dynasty, the Kajars, a dynasty founded in 1787 or thereabouts ?

MR. HOWARD: The Zendia only held out in the South. The passage also relates that the Ismailies of Hindustan and Turkistan used to pay their Imam *Zakat*, or religious dues and that whenever they were unable to remit the money so collected, they used to throw it into the sea. (I have heard the figure employed, of extravagant people, that they "throw their money into the sea," but I never before heard of the thing being literally done.)

THE JUDGE: Oh I believe the same thing is practised in Bombay now though the money is not lost in the sea intentionally. (Laughter.) The place referred to in the account you have read, Koom, where there is the Mosque of Fatima, has been the burial place of the monarchs of Persia for some centuries, and it is the burial place of the kings of the present Kajar dynasty.

MR. HOWARD: The passage shows that Aga Khan was recognized by the *Ismailis of Hindustan* (who are they but the Khojas?) as an hereditary religious chief. (The learned counsel then read a translation of a passage in the *Nasi-Khut Tawarikh* which narrated the marriage of Aga Khan with the 23rd daughter of the Shah of Persia, and his unsuccessful rebellion against a subsequent Shah.) After the Aga's defeat we find him in Scind, and then in 1845, we have him arriving in Bombay.

To go back, a little, I may say that the account books of the Khojas show that the caste cent money to the Imam (the Aga's Father or Grandfather) in Persia in 1775 and in other years of the last century. Now your Lordship may remember that the witness Russool said a Suni could not pay *Zakat* to a Shia; so that in paying the tribute to Aga Khan, they were doing that which no Sunis would have done.

THE JUDGE: I think it is clear no Sunis would act in such a way, and that these facts are all of them important as showing that money in the way of *Zakat* was sent by the Khojas of Bombay and other places to the Pir Salomit.

I think it will be well for you to defer the rest of your argument till Monday.

The Court then rose.

On the reassembling of the Court on Monday—

MR. HOWARD said: I wish to add a few words, my Lord, to that part of my argument which had reference to the Ismailes. The

learned author of the *Dabistan* writing in the year 1618 speaks of the Ismailies in such a way as makes it clear that he regarded them as a religious body at least as respectable as any other. It was said by Mr. Anstey that the Ismailies were considered as outcasts, even by the Shias, but that is demonstrably incorrect. At page 397 of the second volume of the *Dabistan*, there is this passage—

“Information was received from Mir Amir who was a governor of the Naváhi “district” of the town SheKunah, that the Ismailiah are a tribe among the Shias, and their creed is ascribed to the Lord Imam Ismail, the son of the Lord Imam Jafer Sadik and this sect believe this Lord an Imam.

One of the Ismailiah divines mentioned in the *Dabistan* is found at Mooltan, which in those days was almost a frontier town of Persia, and in *Chardin's Travels*, it is said there was a great caravanserai at Shiras devoted to the Mooltanese pilgrims; the passage is at page 418 of the VIII. Vol. of the *Voyages de Charpin*, and is as follow :—

“Les bouts se rendent l'un à la place qui est au-devant de la maison du gouverneur, l'autre au caravanserai des Multani, qui sont les Indiens ainsi nommes de Multan, gaande ville des Indes, sur les frontières de la Perse, du côté du nord; les deux autres en d'autres endroits.”

Therefore any argument for Pir Suddroodeen's having been a Suni, founded on the fact that he was buried at Mooltan (now a Suni place) comes to nothing. There is nothing more probable, than that in those times, he an Ismaili Dai, would pass through Mooltan on his way between India and Persia.

Again as to the Ismailiah, at page 419 of the second volume of the *Dabistan* it is said: “A great number of learned men are followers of the Ismailiah, such was *Amir Ná's er Khusro* from among all learned poets the contemporary of Ismail, surnamed *Montasser* “the victorious.” *Amir Ná's er* was born in the year of Hejira 859 (A.D. 969). When he arrived at the age of discernment and rectitude, he heard the voice of Hussen teaching the morals of the Ismailiahs, in the time of the Khalifut of the legitimate Imam Montaser; he hastened from Khorassan to Egypt where he dwelt seven years: every year he made a pilgrimage to Mecca, and returned from thence; he was exceedingly devoted to the practice of the law.”

At page 423 of the same volume the author says: "The Imams of the Western Ismailiah were all zealous in the practice of exterior worship, and an account of them is published in the historical books. The Ismailiah of Iran are celebrated with the Ismailiah of Kohistan and Rudbar. The first of the former was *Hassan* son of *Sabah*. As the account of him in the histories has been traced with the pen of partiality, therefore I shall endeavour to make a statement such as obtains credit among the Ismailiah concerning him." This shows, my Lord, that the ordinary account of *Hassan* and his followers was disputed by the Ismailiah themselves and apparently the writer of the *Dabistan*, shows that he is impartial by adverting to the fact. (With regard to the missionaries of *Hassan Saba*, Mr. Anstey said that the word *Dá di* meant a *Governor*, but that I venture to say is a mere mistake. It is not like "dey," Shemitic, at all, but an Aryan (Persian) word signifying a "caller" or "teacher." These missionaries were not only stationed at *Alamut* but from thence were sent forth to other places, whilst the chief of the sect devoted himself to the work of government.) At page 429, we come to the charges which history records against the "Assassins":—

"At that time the *Fedayis*, in order to destroy the learned men and theologians who entertained a hatred towards the chosen Ismailiah, and reviled their creed, were dispersed on all sides, and they brought a great number of this class beneath the blows of their swords and poinards: on which account the learned men and the theologians of the adversaries were frightened." The author speaks of these assassinations quite coolly, and of course among Mahomedans the killing of people for the sake of religion, provided always that the murderer is an orthodox Moslem is considered very proper. In proof of this I would refer to *Muir's Life of Mahomed* where the author refers to the practice of religious murder as having been expressly sanctioned by the prophet. At page 131 of the 3rd volume he thus speaks of assassination :—

"The first blood shed at *Madina* with the countenance of *Mahomet*, was that of a woman. *Asma*, daughter of *Marwân*, belonged to the *Bani Aws*, and to a family which had thrown off their ancestral faith. She made no secret of her dislike to *Islam*; and being a poetess, composed some couplets, after the battle of *Badr*, on the folly of her

fellow-citizens in receiving and trusting one who had slain the chief men amongst his own people. The verses spread from mouth to mouth (for such was one of the few means possessed by the Arabs of giving expression to public opinion) and at last reached the ears of the Mussulmans. They were offended, and Omeir, a blind man of the same tribe, vowed that he would kill the author. It was but a few days after this return of Mahomet from Badr, that this man in the dead of night crept into the apartment where, surrounded by the little ones, Asma lay asleep. Feeling stealthily with his hand he removed her infant from her breast and plunged his sword with such force into her bosom, that it passed through her back. Next morning being present in the mosque at prayers, Mahomet who seems to have been aware of the bloody design, said to Omeir; "Hast thou slain the daughter of Marwar?" "Yes," he answered, "but tell me now is there any cause of apprehension for what I have done?" "None whatever," said Mahomet, "two goats will not knock their heads together for it. Then turning to the people assembled in the mosque, he said: "If ye desire to see a man that hath assisted the Lord and his prophet look ye here!"

In the notes to this passage it is said: "Couplets if happily composed, on any topic of general interest, spread abroad like wild fire. They performed the part of the press in our days, by giving expression to public opinion, and on critical occasions often played an important part in forming it. Mahomet greatly dreaded the satires of his enemies, and not unfrequently employed poets for a similar purpose on his own side.

Hishami says that Mahomet being vexed by Asma's verses said publicly "who will rid me of this woman?" which speech, overheard by Omeir, led to the assassination."

This shows, my Lord, that Mahomed formally approved of assassination for religious purposes.

Assassination for religious objects among Mohammedans and the Shemitic races generally, was deemed right and lawful, and was in no wise regarded with the horror with which we in modern times view any kind of assassination. But can we Christians forget, that the man claiming to be the head of the Christian church, the Pope of Rome, highly approved of the massacre of St. Bartholomew, which exceeded any thing recorded of the Ismaili *Fedayis*. Catholics and

Protestants equally, at the present day regard that atrocity with feelings of reprobation. No Scotch Presbyterian would now defend the assassination of Archbishop Sharp, but as I have said, the idea that murder committed for religious purposes is a crime, is purely modern.

When the Court rose on Saturday, I was engaged in describing the connection between the Khojas of Bombay and their Pir, and I read some extracts to your Lordship, which identified Aga Khan's father and grandfather equally with himself as the successive Pirs of the sect, and Imams of the Ismailiah. I now desire to call your Lordship's attention to the fact, that the books of the Bombay Jamat, show that in 1806 and 1807, the Khojas of this island sent tribute to the *Pir Salamat*. This was the Aga's father. In 1816, the Aga succeeded to the office and the books of the Jamat show how eagerly he was acknowledged. The first document I shall now proceed to read, is a letter—which with others will of course be tendered in evidence—written in Persian. The date answers to the 23rd May 1792. It was written by Shah Khalilullah (the Aga's Father) to the Jamat of "Dervishes," or devotees at Bhownagar, and in it he says he has been so fortunate as to have taken his seat on the throne of the Pirs. He also asks them to be faithful "as usual" in sending money to him, as their Pir and to remit to him to the care of the Jamat at Muscat. The next letter is dated July 1794, the precise day does not appear. It is from the Shah Khalilullah, and addressed to the sincere and faithful Dervishes residing in Scinde, Kutch, Surat, Bombay, Mahim, Bhownuggur, and other places. In the letter he directs the Jamats that they should send him a fixed stipend at the end of every month, as all of them are faithful, and well wishers of their Sircar—"Sircar Sahebi" being the title of the Pir and the name in which the accounts between him and the Jamats are kept. (And here I may mention, my Lord, that the title of Imam is a secular as well as a religious title, and in some measure equivalent to a royal title. But practically, it is not understood as implying a claim to the regal office, any more than the title of "King of France" assumed by the kings of England, up to the reign of George the III. Shah Abbas, however, said he would have all the self-styled Imams swept off the face of the earth.) The next letter is dated the 27th December 1820; this is from Aga Khan and is addressed to the Khoja Jamats of Scinde, Bombay, Kutch, Surat and other places.



It states that the Kamaria will deliver to the Jamats the letter of the Sircar and inform them respecting the one-tenth grants, that were asked in aid of the Sircar's marriage gifts to the King of Kings (the Shah of Persia). He also says that the dues hitherto paid, have not been sufficient or equal to the proper amount. Now from this, it is quite clear, my Lord, that there was some fixed amount payable by the Jamat to the Pir, that it was clearly understood, and that properly, the dues were to be paid at the end of three months.

Another letter from the Aga is dated March 1824, in which one-fifth is asked for. In a letter dated November or December 1825, the Aga refers to the existence of the regular accounts kept between himself and the Jamats and appoints persons to go and adjust such accounts. A letter of October 1825 shows, there was a well understood system of tribute and account practiced by all the Khoja Jamats, for, speaking of certain places, the Aga says, the Jamat have transgressed his rights and he "will not allow it," and he evidently treats the whole matter quite as one of business. And yet this is the Pir who, the plaintiffs pretend, did not set himself up until 1831.

And now my Lord, I proceed to speak of the Dufars or account-books of the Khojas. These books have been in the custody of the Master in Equity, since the former suit. One of them is a Guzerati accaount book of the Bombay Jamat, containing the cash account for 1806-7. At page 13, under date of 10th January 1807 there is an account with the Shri Sircar Sahib (*i.e.*, the Aga). Then there is a credit to the Tanna Jamat, of Rs 325, sent to the Bombay Jamat for transnussion to the Aga as Pir. In the same book, for the same year there is a credit to the Mahum Jamat of Rs. 1,300 received for transmission to the Pir, and the payment of this sum to the Bombay Jamat, appears in the accoutt book of the Mahum Jamat. The same book of the Bombay Jamat contains a credit for Rs 46-4-0 received for payment to the Sircar, from the friends of a deceased person in Muscat. Then on the 9th April 1807, there is a sum debited to the "Durkhana," which is explained as meaning the residence of the Pir. This item was for money expended on goods bought for the Pir and sent to his residence, and thus it seems they credit the Pir with all money received on his account, and debit him with the goods bought with part of such funds. The Bombay Jamat appears to have received the dues from

certain other Jamats up-country and accounted to the Aga for the gross receipts

**THE JUDGE** It appears natural that there should have been such an arrangement, this being the great sea port. I suppose the goods and money were sent hence, by way of the Persian Gulf?

**MR HOWARD** No doubt. There are other entries of the kind, my Lord, but I only think it necessary to mention a few of them. In the account book of the Bombay Jamat for 1818, there is an entry, every word of which is important, because your Lordship will remember that it was about this time that Aga Khan succeeded to the Musnud. Here the Aga is spoken of as the only true "Guru" (religious teacher of Hindoos). I say that it is subject to the strongest comment that people should now come before the Court and assert, in the face of such evidence as we have here, that the Khojas merely treated Aga Khan as a nobleman and relative of the Shah of Persia, and that it was not till the year 1830, that he set himself up as Pir. Some, at least, of the persons who instruct my learned friends, in particular, the more elderly of them, must know perfectly well that the statement they make is entirely false and without foundation. In another entry the Pir Salamut is credited with Rupees 90, part of the money received on account of people admitted to the Khoja caste, at Zanzibar, and for the administration to them of the dust of Keibela. In an entry in the account book of the Bombay Jamat for 1820, it is stated that a son having been born to Shah (or Pir) Hoosain Ali (Aga Khan) a present in money was given to the person (Fakir Noor Mahomed Kasimir) who brought the good news from Persia.

(Having read all the correspondence and the entries referred to, together with further entries of monies sent to Aga Khan as the Pir, Mr Howard went on to say) The payments go on till September 1826, when there is a pause, and this enables us to understand the reason for Aga Khan's sending his messenger to collect his dues in the year 1828-29. In 1829 the first bill was filed in his name, but as he says, without his authority. Now with what conscience can the relations allege, as they do in the bill, that Aga Khan first set himself up as the Pir of the Khojas in 1831? I repeat that allegation must have been false, to their own knowledge. They make no suggestion to explain how the Aga obtained his influence with the Khojas, and the mere excuse that

he was a nobleman and a Syud, is quite insufficient to account for the fact, which is patent in the books of the Jamats which I am now reading from, that for many years the Khojas were in the habit of sending a *Jholee* (purse or bag) by Rais, or envoys, to the Pir Salamat at the "Durkhana;" which custom is proved to have been established for some time by the fact that in the letter he claims his "usual" dues. In the book for 1826, there is an account of certain goods sent to the Aga, and the Jamat is here called the "Jamat of the Pir Sahib." Then in the cash book for 1831, there is an account opened in the name of Sha Hussein Ali (Aga Khan). From 1831 there is an interval in the accounts with the Aga, of about four years. In one book there is an entry relating to Rs. 48 overpaid to the Aga, and at all events that shows that the Jamat were free agents and exercised the right of examining and correcting the accounts with their Pir. There are many other entries similar to those I have already read, but I do not know whether the Court requires me to go into them?

THE JUDGE: Do I understand you to say that from this time, until recently, no entries appear of the transactions between the Bombay Khojas and the Aga?

MR HOWARD: Yes, my Lord, there are no entries from 1835 or 1836 until a comparatively recent period, but large sums were still sent to the Durkhana. the money was paid as a cess. The cash was handed over by the Jamat to the Agents of the Aga. (Mr. Howard then read some more items in the account)

THE JUDGE: In the face of all this evidence, it appears very difficult to contend that no payments have been made to the Aga as the religious Pir of the Khojas.

MR. HOWARD: Undoubtedly, my Lord, I cannot see how my learned friends can get out of their difficulty.

THE JUDGE: Who are these Momens spoken of?

MR. HOWARD: They are a sect of Guzerati Hindus partially converted to Islam.

THE JUDGE: Who and what are they?

MR. HOWARD: They are a humble community of shoemakers or cobblers, not Khojas, but adherents of Aga Khan.

THE JUDGE: Is theirs an hereditary trade?

MR. HOWARD: Yes, my Lord, and you will remember these people

are mentioned in the *ginans* as having "attained salvation" They are very poor people. I am told it is wholly untrue, as has been alleged, that they were first admitted to the Jamat by Aga Khan. They were always admitted there. In the accounts of the Jamat there is an entry stating that half a rupee was received in copper money from Momens

THE JUDGE : This appears like the contribution of Peter's Pence.

MR. HOWARD . It does

THE JUDGE . Does it appear where the money from the Momens was collected ?

MR. HOWARD . I am told these people are dispersed and that they are not found in Bombay alone. There are several entries in the accounts, of contributions in very small sums from the Momens, and I think that is important as strengthening my argument. It shows the diffusion of the Aga's claims.

THE JUDGE The force of your argument does not rest merely upon the amount of the contributions thus made to Aga Khan, but upon the fact of such payments being made ?

MR. HOWARD Yes, among the accounts there is an item showing that a sum of money was paid to Aga Khan for a divorce obtained among the Momens. In turning over these accounts, I find something of importance in almost every page. Here is one entry proving that on the 17th June 1852, rupees 26 were paid to the Aga's son for attending at the marriage of some Khojas.

THE JUDGE Do not pass over anything material.

MR. HOWARD : I am much obliged to your Lordship, but I fear I have already trespassed much upon the time of the Court.

THE JUDGE But this point is very important, especially with regard to the earlier entries in the books, because the case against Aga Khan is that he has exercised authority, and set up claims which he had no right to. That allegation is clearly done away with if these entries are genuine and correct, for they show that the custom of giving money to the Aga as the Pir of the Khojas has existed for a great many years, although on the other side it is attempted to be shown that it was only at a comparatively recent period he claimed to be Pir. It seems to me that the earlier dates in the accounts are the most important.

MR. HOWARD . There are entries in the account books of the Bom-

bay Jamat for 1835-36 and 1837 to which I will call your Lordship's attention, for they show that three properties, situated in Bombay, one in Duncan road belonging to the Sirkár Saheb were bought by the Jamat and the proceeds handed over to Mobamed Kureem, the Aga's agent, for transmission to the Aga. These entries appear in the books as regular commercial transactions; it is evident the Jamat considered that the properties belonged to the Aga, and that therefore they sent the price to him at the Durkhana by his agent. Now these are extremely important transactions, as they show clearly the relations existing between the Jamat and Aga Khan; and from the oral evidence we shall produce, your Lordship will find that this landed property had been bought out of funds belonging to the Sircar, and of courses if that is proved the Court will hold that the property belonged to him just as much as if it had been bought by him personally. The transactions are perfectly open and businesslike as they appear in the account books of the Jamat who do not there pretend to hold such property as against the Aga. The officers of the caste—and I call them so, because there is no attempt to show that they have been put out of their offices—will prove that all the caste property in dispute claimed by Aga Khan properly belongs to him, as having been bought out of the religious contributions made to him by members of the Khojas and Momen sects.

**THE JUDGE :** There is very great absence of proof upon the part of the relators and plaintiffs with regard to the purposes for which this property was purchased. I confess that the case of the plaintiffs on that point was very weak indeed.

**MR. HOWARD** Of the "Dussoon" one-tenth was payable to the "Sha Salamut," the Aga himself, and two and a half per cent. to the "Pir," the title appropriated to his heir apparent. There were fees payable on the marriage of Kojahs, and if they were not paid the ceremonies were stopped. Our witnesses will tell your Lordship they never would have made the offerings, except on the understanding that they would go to the Pir. The separation in the caste commenced about the time when the Aga demanded his dues in 1829. The opposition party has always been small and vigorous: they comprised at first twelve persons, called popularly in the caste, the *barbhaya* (twelve brothers). They commenced to ally themselves to the Soonies as a party manœuvre, just as the Federals in America made use of abolition

as a military measure against the south ; and as the Portuguese in Bombay attached themselves to the jurisdiction of Rome or Goa, according to the exigencies of the moment—or—to use another illustration—as the Prince of Wales afterwards George IV, one day when he was a little boy, and something had put him out of temper called out “Wilkes and liberty” at his father’s door. This is the real and recent origin of Sunyism among the Khojahs. Up to the time I am speaking of, the Khojahs had been accustomed to employ the sacred dust of Kербela in their devotions. The opposition began to abandon this practice and at this time they seceded to a new Jamat Khana and were excommunicated in accordance with the directions of the Pir. Five years later came the submission of the opposition, and a very important piece of business was transacted between the Jamat and Aga Khan—I mean in reference to the purchase of the landed properties in Bombay out of the offerings credited to the Pir Salamat. As I have already shown, these were bought in, by the Jamat, and the proceeds remitted to the Aga in Persia. Returning to the correspondence which I have read, I may no doubt take it, that your Lordship will remember the letter addressed by the Plaintiffs party to the Jamat at Bhownuggur. I now propose to put in the answer sent to that letter, the existence of which my friends say they know nothing about.

THE JUDGE. What is the date of the letter ?

MR. HOWARD. The date of the Bombay letter is 2nd January 1862, and before reading the answer, I will refresh your Lordship’s memory on some points. The Bombay letter is addressed to the people of Bhooj, and in it, the Plaintiffs say that they have a school at which children can be taught free of charge, at the Musjid built by the relators party. (Mr. Howard read the letter and added) I shall prove that the Plaintiffs have not dared to put up any Suni inscription in their new Musjid. They mention Aga Khan in this letter in precisely the same way that the Parliament party at first talked about Charles the 1st—respectfully of his person but condemning his measures. It would be just as ridiculous for the Plaintiffs’ party to say that when they wrote this letter, they did not recognise Aga Khan as the Pir of the caste, as for the Parliament party to say they did not recognise Charles the 1st as King of England at the time when the quarrels began between them and the King. In stating their objections to the Aga’s policy in this letter, the Plaintiffs do

not say that he is an impostor, or that they are Sunis and do not choose to follow him; but they actually mention him by inference as the Pir ["any other Pir"] wherein they admit the very foundation of our case. They talk about it being a matter of faith and state that Ali founded the true religion! So it seems they did not know what the orthodox Suni Mohamadan faith was then. It is since 1862 they have learned their catechism and to relegate Murtiza Ali to a humbler rank. They say they do not think it right to put their signatures to the declaration issued by Aga Khan, adding, however, that should all the other Jamats think their conduct improper it might be discontinued! Now it is certain that Sunis could not possibly write such a letter as this. We have here the timid language of persons who feel that they have taken a dangerous step, the issue of which is doubtful. They therefore write to the Jamat at Bhownuggar asking them what they think of the steps taken by them (the Plaintiffs); they say too, that the Bhownuggar Jamat should not carry on matters as the Bombay Jamat (i. e., the Aga's or true Jamat, as we say) did, but should receive back into it persons who had left it. Now I do not understand how persons can write a letter containing such a declaration and ask their counsel to put it before the Court. They ask, too, that the persons on the other side, whom they here admit to be the Bombay Jamat, may not be allowed the use of the caste property.

THE JUDGE: I do not see how there can be two Jamats in Bombay unless the caste is split up.

MR. HOWARD: The worship of the two parties cannot be carried on in the same building—although in Germany one may see, as I have at Heidelberg, a Protestant and a Roman Catholic congregation, worshipping in the same church. But we could not expect the same thing to occur here. The case of the Plaintiffs is, that the defendants are heretics, that therefore they ought not to be allowed to enter on the caste property, and that being so, I submit the Plaintiffs cannot now be allowed to withdraw from that position and say "oh very well, the court says we have made an unfounded claim to an exclusive property we will now abandon it, and accept part instead of the whole of the caste property." I say your Lordship will not allow that change of front and that you will not amend the prayer of the Bill to the detriment of my clients.

**THE JUDGE :** Unless I see it is proved that the Khojas were Sunis and not Shias, I must leave the whole matter to the Jamat. And assuming that there is a failure of proof of what appears to be the necessary foundation of the Plaintiffs' case, at least so far as regards the 5th paragraph of the prayer, I do not see how, in the absence of the necessary evidence, the Court can do what it is asked to do in that paragraph.

**MR. HOWARD :** I will now read the letter from the Bhooj Jamat in answer to the communication sent by the Plaintiffs. (Mr. Howard read the letter in which the Bhooj Jamat said, "We are upon the right side, but should his Lordship Aga Khan ask for the signatures, we are ready to give them, 1,000 times a day. Whatever order comes from him we are bound to obey.")

**THE JUDGE :** Well, that is a very decided letter ; at any rate, there can be no mistake about that.

**MR. HOWARD :** Yes, and it shows how strong the feeling of respect for the Aga was among the Khojas unconnected with Bombay.

**THE JUDGE :** Is Bhooj the original country of the Khojas ?

**MR. HOWARD :** Yes, Mr. Anstey himself said so in his opening speech, and if your Lordship recollects, Allarukia Coorjee confirmed the statement.

**THE JUDGE :** About what time was it when Pir Mohamed Sha, referred to in this letter, "attained Paradise" ?

**MR. HOWARD :** He was buried in the Durga about 30 years ago. With reference to the attempt made to put Aga Khan in the witness box, that was meant, and would, in fact, have been, a very great outrage to his feelings ; and we know from the attitude of the Plaintiffs in this suit, and particularly from the speech of Mr. Anstey, what sort of forbearance would have been extended to the Aga in the witness-box. And here I may say that a most painful impression was produced on the minds of the Defendants, who have their religious feelings as well as Christians, by the jocular allusion of Mr. Anstey to one of the twelve Imams. It was very improper in a Court of this kind, which has to deal impartially with people of all kinds of religion, to make such an offensive remark. Your Lordship has really no jurisdiction in a purely religious dispute, and allusions to purely religious matter made by counsel are out of place. Your Lordship recollects the painful feeling created among the bar and the



public in England, when the learned Judge who presided in the case of Dr. Achilli, permitted himself to express strong Protestant feelings from the Bench ; and if that was the case where the contending parties were Protestants and Roman Catholics, how much more necessary is it that here among Mahomedans and Heathens the Court should be kept clear of religious personalities.

**THE JUDGE :** Sitting here as a Judge in India to administer justice among people of so many creeds, of course I am bound to show no religious bias.

**MR. HOWARD :** And, of course, your Lordship cannot be asked to give a religious colouring to your decision.

**THE JUDGE :** In this case, though I am judging between Sunis and Shias, it is not supposed that I should favour one sect more than the other. The only question is, who are the innovators, the Plaintiffs or the Defendants ? Were the Khojas until recently Shias, or have they always been Sunis ? These are merely questions of fact.

**MR. HOWARD :** There is no question whatever as to the entire impartiality of the Court. And, of course, your Lordship fully understands that my argument relates solely to the issue of fact. I do not know what my learned friends' reply will be ; it really seems to me that the evidence, even before we have called a single witness, is most conclusive, but I cannot help feeling an anxiety to ask your Lordship to repress any attempt to raise, by indirect means, a prejudice against the chief Defendant.

I can suppose that my learned friends will be instructed to urge that a religious leader should not keep racing stables. Your Lordship will, no doubt, recollect that in the examination of Kureem Khan, an attempt was made to elicit how the Aga spent his income, and to throw blame on him for abstaining as he does from preaching and religious dogmatising like an English missionary—for that was what was really meant. I say all these things were attempts to raise a prejudice against the Aga. On the other hand, I say that Aga Khan is, or was, the son-in-law of a king ; he is a soldier, and the honoured ally of the British Government, from whom he still receives a pension for services rendered in the saddle on the battle-field. He is a Prince, come of the family of Hashem and the tribe of the Koreish, a lineage compared with which, Bourbon and Brunswick are recent, and to suggest that this Chief, because he is the hereditary possessor of a religious dignity, must not

indulge in the frivolous sport of horse-racing, on the pain of losing his legal rights in this Court, is an attempt to warp your Lordship's sympathies by appeals to prejudice such as are anything but respectful. We have had princes of our own blood royal, who were at once bishops and men of the world. The Bishops of Osnaburgh have been sportsmen without blame, and so have Popes. I suppose that the Aga's race-horses are quite as respectable as the dogs and falcons of Leo X., and a great deal more respectable than the daughters of Julius IV., and I will go so far as to surmise, that if the choice were to be made, many Roman Catholics would rather kiss the hand of an Aga Khan than the toe of an Alexander the VI.

**THE JUDGE :** Well, these are matters which must be left to the gentlemen who address the Court, but I should think hardly any counsel would consider it necessary to indulge in vituperation of the other side. In the end it could do no good.

**MR. SCOBLE :** I should say that the Court will deal with the misappropriation of money; and in proof of that I shall bring forward authorities.

**MR. HOWARD :** I apprehend your Lordship will hold it is not for the Court to enquire what becomes of the money after it has regularly passed out of the hands of the Jamat into those of the Aga. I shall show that the money so given is for his absolute use.

**THE JUDGE :** So far, it does not appear to me that I can deal with the money paid by the Khojas to the Aga, as their spiritual head as funds intended for charitable objects.

**MR. HOWARD :** Unless my learned friends can ask your Lordship to disbelieve the convincing evidence that will be adduced before you on the fundamental issue of the Khoja religion, and can satisfy your Lordship that the Khojas are, and have always been, Sunis, then the decree must be in favour of the Defendants.

**THE JUDGE :** The case really turns upon that.

**MR. HOWARD :** I should tell your Lordship that we have the accounts of some other of the Khoja Jumats besides that of Bombay. In their general character, they are exactly similar to those you have already had laid before you. That is, they are composed of receipts on behalf of the "Sirkar Sahebi," and payments on the same account.

**THE JUDGE :** Unless there is something particular in them, I do not think it is necessary to go into them.

MR. HOWARD . In the accounts of the Mahim Jamat, there are some items which point to important facts, for instance, it is shown that in the year 1806 the Momens subscribed money to be forwarded to the Pir at the Durkhana.

THE JUDGE : Will it form part of your case, that there were pilgrimages made to the Durkhana ?

MR. HOWARD : Yes, my Lord, we shall bring forward witnesses who have made the pilgrimage thither.

THE JUDGE : I will take it the accounts which you put in show that a large amount of money was collected among the Momens and transmitted to Aga Khan or his ancestors. I do not think you need trouble yourself further on the point.

MR. HOWARD : Very well, my Lord, I will leave that branch of the evidence.

You will recollect that my learned friends brought here an old man named Syud Pir Sha bin Syud Meer Hoosein, and made a great deal of him, because he described himself as being a descendant of Pir Suddroodeen. He offered to put in this pedigree, the correctness of which was not and could not be disputed, but it was not admitted by the Court, because there was no official translation of the same. He said he was a Suni and the Khojas were Sunis, and that he led the Suni prayers in the Khoja Musjid. Now, to show what the value of his testimony was, he said that he should hold all who said their prayers properly to be true Suni—that opinion, of course, being merely founded on external conformity. In cross-examination the old man said, he did not know any of the Khoja books. Perhaps externally his father may have been a Suni, and his grandfather may have been the same before him, but he is not a Khoja, and he proves nothing as to what the Khoja religion was originally. A man like this witness might fancy, because his family followed the Suni outward observances his ancestors were all Sunis, but that shows nothing as to the faith of the Khoja community.

THE JUDGE : The witness said he was a Suni Mussulman, not a Khoja.

MR. HOWARD : Yes, what I say is, that because a man on the ground of external conformity holds himself a Suni now, it does not in the least follow that 400 years since his ancestors were Sunis. The Court will recollect that *Hamilton*, writing in the last century

says, there were many Shias in India, and the subsequent authorities describe them as few, and what I suggest is, that like many others, the family of this old man living among Sunis, may through fear, though originally Shias, have outwardly conformed to Sunism. Wherever there was a majority of Sunis, a bloodthirsty and fanatic people, ever ready to turn out in arms and destroy the heretics on the slightest hint that the Suni faith had been insulted, the Shia minority would be led to lay aside, and perhaps in a generation or two forget their faith. The Khojas in Bombay were always small in number compared with the Sunis, and being timid in character like all the Hindoo races, in the presence of genuine Moslems they easily submitted to pressure.

- . In further confirmation of my contention that the Khojas were always Shias, I point to their observances in regard to the Mohurram, and their mourning for Hassan and Hosein, which so far as it is a genuine mourning is essentially a Shia institution. In *Chardin's Travels* we read of the way in which the Mohurram is observed by the Shias of Persia. They lament, beat their breasts and really mourn.

THE JUDGE: Yes, we read the same thing in *Porter's* elaborate account of what he saw at Teheran; that was written in 1818. And Watson in his recently published *History of Persia*, describes the magnificent dramatic representations of the sufferings and the death of Ali. According to all the accounts I have read, the Persians appear to be affected by the representation of the Mohurram, in the most wonderful manner.

MR. HOWARD: Similar feeling is manifested by the audience at the representation of the Passion at Ammergau in the Tyrol. The Sunis of Bombay observe the Mohurram also, but not in the same spirit that the Shias do. They carry about what purports to be the tomb of Hussan, but as a mere empty show, and they only pretend to be mourning. In a book relating to the natives of Bombay there is a very elaborate description of the Bombay Mohurram, and the author states that the taboots are intended by the Sunis as a great pantomime, and ludicrous exhibition, while the Shias regard the anniversary as a most solemn season of mourning and would be deeply scandalized at any ~~one~~ who should make merry over the death of their martyrs. One piece of fun practiced by the Sunis on the taboot day, is to dress as fakeers and scatter obscene ribaldry on all sides.

One of the troop assumes the dress of a woman with a garment reaching down to the knees, forming a butt for immodest merriment. Again, other persons dress up as Africans, whose barbarous gestures and uncouth language they mimic to the amusement of the crowd. Others dress as birds, and one pretending to be a hawk, may be seen darting after others disguised as paddy birds. Among these "King Crow" prominently figures. Grossly indecent comic songs are sung by these performers and all kinds of buffoonery are indulged in. A standing joke is to dress a fellow up as a Marwarree, who is told that his wife, from whom he is supposed to have been absent for ten or twelve years, has just been delivered of a child, and his good fortune in becoming a father under such circumstances, is humorously, however coarsely, expatiated on by the bystanders.

How different is the Shia Mohurrum. In Bombay the Moguls mourn at the Mohurrum in the ardent passionate way that they do in Persia. The Khojas, true to their religious character, take a medium course between the Sunis and the Persians. They look with the greatest horror on the buffoonery of the Suni taboots, regarding it as impious. But upon the other hand, they do not indulge in the violent and demonstrative grief of the Persians. What the Khoja do is to shut themselves up in the Jamat Khana and listen respectfully to the reading of the history and martyrdom of Hassan and Hosein. This shows however, that there is a radical difference between their view of the great Alite anniversary, and that of the Sunis. So much for the Khojahs as a community.

I shall not say much, my Lord, about what the Aga has done since he has been in Bombay, because the witnesses who will be called before your Lordship will give their evidence as to that, under the sanction of an oath, but I can say by way of anticipation, that all that has come from him in the way of advice to his Khoja followers is consistent with his being a sincere and faithful Mussulman. One of the first things which set the party of the Aga against him, was the dispute about the Khoja female succession, in which as I have said, the Aga wished to supersede Hindoo custom by Mahomaden law. In 1845 the Aga came to Bombay like a Pope driven from Rome to Avignon. Here he was received with great distinction by all the Khojas, including the Relators and Plaintiffs, not merely as a man of rank and a Syud (for why should the Khojas more than others,

specially honour him on these grounds?) but as the recognized religious chief of the community. He at once led the mourning in the Jamat Khana during the Mohurram, in the Shia form; he held his Durbar at which all Khojas attended and kissed his hand, the opposition as well as the others, and brought their offerings. Hubib Ebrahim, the great schismatic, showing his enlightenment, or his stinginess by offering a rupee on such occasions, which at all events fixes him as honouring a Shia, in a way that no Suni would do. The relators have not attempted to explain, how, if the Khojas at this time were orthodox Sunis, they could consistently pay these honours to a Shia. It was in 1847, whilst Aga Khan was away in Calcutta, that the dispute about the inheritance of the Khoja females arose. At this time arose war in the community, and the second secession of the opposition. During his absence in Calcutta the Aga was represented by his brother, who in regard to the succession of females, recommended that the law of Islam should be followed by the Khojas, but the party of the plaintiffs, the orthodox Sunis as they wish to be thought, would agree to nothing of the kind and insisted on adhering to the old Hindoo custom of the tribe, and they succeeded. The suit in 1850, came to an end with the so called decree, of Sir Erskine Perry, which was followed by a reconciliation between the two parties, the abolition of the schismatic Jamat Khana and the removal of the schismatic Mookhi and Kamaria. It is important to remember that after the suits, Aga Khan, or persons of his household continued to live in the Jamat Khana with the assent of the whole caste. From that day to this, the Aga has continued to preside over the Mohurram mourning in the presence of the caste. No attempt has been made to explain away this fact, which I rely on, as absolutely demonstrating that the pretended Sunism of the plaintiffs is something quite new. It was first set up, in point of fact, in the "Khoja Dost" newspaper in 1861, wherein it was stated in terms, "the Khojas are Sunis." That was going a little too far; the Aga did not care about his people going before the Cazi to be married, but when it was formally asserted that his people were Sunis, he saw it was time to move. If he had been silent after that published statement, it would have been supposed he acquiesced in its truth, and therefore he did what he considered it was his duty to do, namely, he issued a manifesto denying the

truth of the allegation in the "Dost," and directing the people to give up their outward Suni practices, and show themselves what they really were. The paper containing the declaration of the people, that they were Shias, was subscribed by the great majority of the caste, and it was only the old *barbhaya* party who took the ground of opposition to the Aga and the majority of the caste.

I have occupied the attention of the Court at great length, and now, finally, I will only ask your Lordship to apply the same canons to this case that you would apply wherever there is a conflict of evidence. The Plaintiffs have, I maintained, discredited themselves by the way they have put their case before the Court. They have unquestionably endeavoured to mislead your Lordship. They have concealed important facts which they must have known, I mean the books, prayers, belief of the old Khojas, and the practices disclosed in the Jamat accounts. They have instructed or allowed their counsel to carry on the suit in a spirit of annoyance and insult towards Aga Khan; they have slandered him as an impostor recently risen among them when they knew that at least his grandfather was the object of their father's reverence, and they have even pried into his harem, the last of insults in the east. They have been met, not by declamation but by history, which any one may read, and by facts apparent in the records of the tribe—evidence, I repeat, which they have sought to suppress. They pray that Aga Khan and the majority of the Khojas may, practically, be expelled the caste; and they do this, forsooth, in the interests of religion and morality! That was the last touch wanting to complete the picture. Mendacity and malignity are incomplete without a touch of religious hypocrisy. I submit, my Lord, that these Tartuffes represent neither the interest of justice, truth nor benevolence, and that they are in no way entitled to your Lordship's decree.

Mr. Green and Mr. McCulloch, followed on the same side, and many witnesses were called in support of the Defendants' case.

## THE JUDGMENT.

THE HON. SIR JOSEPH ARNOULD in the course of his learned and elaborate Judgment in the case, referred to the Oriental authorities “cited at the bar of the Court by the exhaustive industry of Mr. Anstey on the one side and Mr. Howard on the other” as supplying, “ample materials for a dissertation on a subject of considerable interest, both historical and theological.”

His Lordship ruled that there was no ground left upon the evidence on which the Relators and Plaintiffs could seek relief from the Court, either in its charitable or any other Jurisdiction. The Court must decline to grant the injunction restraining the Defendant from exercising his powers for excommunicating Khojas; and upon the whole case therefore the decree which the Court must pronounce was quite clear. It was :

“That this suit be dismissed, as against the first defendant, His Highness Aga Khan ; as against Allarukia Soomar and his co-answering Defendants, and as against Assoo Gangjee—with costs, as to all the said Defendants to be paid by the relators and plaintiffs.

“As against the other Defendants on the record, not in the same interest as the Defendants above named, the decree is that the suit be dismissed, but without costs.”





